



# FEDERAL REGISTER

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA–2021–0676; Airspace Docket No. 21–AWP–33]

RIN 2120–AA66

#### Amendment of United States Area Navigation (RNAV) Route Q–15; Western United States

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action amends United States Area Navigation (RNAV) route Q–15 in order to safely segregate overflight, arrival and departure traffic, and military operations in the high altitude airspace between Las Vegas, NV and Phoenix, AZ.

**DATES:** Effective date 0901 UTC, July 14, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

**ADDRESSES:** FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [https://www.faa.gov/air\\_traffic/publications/](https://www.faa.gov/air_traffic/publications/). For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

**FOR FURTHER INFORMATION CONTACT:** Jesse Acevedo, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the air traffic service route structure in the north central United States to maintain the efficient flow of air traffic.

##### History

The FAA published a notice of proposed rulemaking for Docket No. FAA 2021–0676 in the **Federal Register** (86 FR 48345; August 30, 2021), amending RNAV route Q–15 in high altitude airspace between Las Vegas, NV and Phoenix, AZ. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. There was one comment received that was not germane to the action and will not be summarized here.

##### Differences From the NPRM

In the NPRM published in the **Federal Register** (86 FR 48345; August 30, 2021), the proposal section specified that RNAV routes are published in paragraph 6009 of FAA Order 7400.11E dated July 21, 2020 and effective September 15, 2020. The paragraph referenced is incorrect and should reference paragraph 2006. This rule corrects that error.

United States Area Navigation Routes are published in paragraph 2006 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The United States Area Navigation Route listed in this document will be published subsequently in FAA Order JO 7400.11.

##### Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly

available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

##### The Rule

This action amends 14 CFR part 71 by amending RNAV route Q–15 in order to safely segregate overflight, arrival and departure traffic, and military operations in the high altitude airspace between Las Vegas, NV and Phoenix, AZ.

RNAV route Q–15 currently terminates at the CHILY, AZ, waypoint (WP), just west of Prescott Regional Airport (PRC), Prescott, AZ. Extending Q–15 from the CHILY, AZ, WP to the NABOB, AZ, Fix is to provide air traffic controllers, through automation and industry outreach, one direction airways in that area for Q–13 and Q–15 between WPs where both would intersect between the NABOB, AZ, Fix and the HOUZZ, NV, WP. This allows traffic traveling southeast from the HOUZZ, NV, WP to the NABOB, AZ, Fix to utilize RNAV route Q–13 and traffic traveling northwest to utilize RNAV route Q–15, allowing for a smoother traffic flow in that area.

Q–15: For route Q–15 the FAA is adding an extension to the route from the NABOB, AZ, Fix to the CHILY, AZ, WP. The rest of the route remains unchanged.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

##### Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this airspace action of amending RNAV route Q-15 between Las Vegas, NV and Phoenix, AZ qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action

is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

Q-15 NABOR, AZ to LOMIA, NV [Amended]

NABOB, AZ	Fix	(Lat. 34°19'40.60" N, long. 111°18'53.90" W)
CHILY, AZ	WP	(Lat. 34°42'48.61" N, long. 112°45'42.27" W)
DOVEE, NV	WP	(Lat. 35°26'51.07" N, long. 114°48'00.94" W)
SOTOO, NV	WP	(Lat. 36°17'22.55" N, long. 116°13'14.12" W)
HOZZ, NV	WP	(Lat. 36°36'43.75" N, long. 116°36'37.60" W)
FUULL, NV	WP	(Lat. 37°16'52.93" N, long. 117°10'13.96" W)
SKANN, NV	WP	(Lat. 37°22'52.68" N, long. 117°15'54.53" W)
LOMIA, NV	WP	(Lat. 39°13'11.57" N, long. 119°06'22.95" W)

\* \* \* \* \*

Issued in Washington, DC, on April 20, 2022.

Scott M. Rosenbloom,  
Manager, Airspace Rules and Regulations.  
[FR Doc. 2022-09067 Filed 4-27-22; 8:45 am]  
BILLING CODE 4910-13-P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 401

[Docket No. SSA-2018-0012]

RIN 0960-AI31

Anti-Fraud System

AGENCY: Social Security Administration.  
ACTION: Final rule.

SUMMARY: We previously published a notice of a modified system of records entitled Anti-Fraud (AF) System. Because this system contains some investigatory material compiled for law enforcement purposes, this rule exempts those records within this system of records from specific provisions of the Privacy Act.

DATES: This final rule is effective May 31, 2022.

FOR FURTHER INFORMATION CONTACT:  
Melissa Feldhan, Supervisory

Government Information Specialist, SSA, Office of Privacy & Disclosure, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, Phone: (410) 966-5855, for information about this rule. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our internet site, Social Security Online, at <http://www.socialsecurity.gov>.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2020, we published a Notice of Proposed Rulemaking (NPRM) in the Federal Register<sup>1</sup> in which we proposed to add the AF System to the list of SSA systems that are exempt from specific provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). We also published a related System of Records Notice on the same day.<sup>2</sup> The AF System is an agency-wide and overarching system that includes the ability to detect, prevent, and mitigate fraud in our programs. The AF System collects and maintains personally identifiable information, which assists us in identifying suspicious or potentially fraudulent

<sup>1</sup> 85 FR 79963.  
<sup>2</sup> 85 FR 80211.

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

- 1. The authority citation for 14 CFR part 71 continues to read as follows:  
**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p.389.
- 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

\* \* \* \* \*

activities performed by individuals across all of the agency's programs and service delivery methods. We established the AF System to support our goal of enhancing SSA's fraud prevention and detection activities by protecting the public's data, providing secure online services, and increasing payment accuracy.

This final rule adds the AF System to the list of SSA systems that are exempt from specific provisions of the Privacy Act due to the investigatory nature of information that is maintained in this system.

Public Comments and Discussion

In the NPRM, we provided a 30-day comment period, which ended on January 11, 2021. We received three comments. Of these three comments, we did not post two; one was blank and the other was unrelated to our proposal, fraud, and the AF System. We posted one comment because it related to fraud. The commenter expressed that we should check up on people who are collecting payments for a long period and said that checks must be signed by only the intended recipient. This comment did not address any specific parts of our proposal.

After careful consideration, we are adopting this final rule.

## Regulatory Procedures

### Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

We also determined that this final rule meets the plain language requirement of Executive Order 12866.

### Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by Executive Order 13132, and we determined that the final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this final rule will not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

### Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this final rule.

### Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

### Paperwork Reduction Act

This final rule does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

### List of Subjects in 20 CFR Part 401

Administrative practice and procedure, Privacy.

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary **Federal Register** Liaison for

SSA, for purposes of publication in the **Federal Register**.

Faye I. Lipsky,

*Federal Register Liaison, Office of Legislation and Congressional Affairs, Social Security Administration.*

For the reasons stated in the preamble, we are revising subpart B of part 401 of title 20 of the Code of Federal Regulations as set forth below:

## PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

### Subpart B—[Amended]

■ 1. The authority citation for subpart B of part 401 continues to read as follows:

**Authority:** Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act (42 U.S.C. 405, 902(a)(5), 1306, and 1320b–11); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923.

■ 2. In § 401.85, add paragraph (b)(2)(ii)(H) to read as follows.

#### § 401.85 Exempt systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(H) Anti-Fraud System, SSA.

\* \* \* \* \*

[FR Doc. 2022–09089 Filed 4–27–22; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 212

[Docket DARS–2020–0044]

RIN 0750–AL19

### Defense Federal Acquisition Regulation Supplement: Commercial Item Determinations (DFARS Case 2020–D033)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 that allows a contract for an item using Federal Acquisition Regulation (FAR) part 12 procedures to serve as a prior commercial item determination.

**DATES:** Effective April 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jeanette Snyder, 571–372–6106.

### SUPPLEMENTARY INFORMATION:

#### I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 65322 on November 27, 2019, DFARS Case 2019–D029, to implement sections 877 and 878 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and further implement section 848 of the NDAA for FY 2018 (Pub. L. 115–91). DoD published a second proposed rule at 85 FR 74636 on November 23, 2020, DFARS Case 2020–D033, to further implement section 848 of the NDAA for FY 2018 due to substantial statutory changes made after the issuance of the first proposed rule under DFARS Case 2019–D029. Comments received in response to DFARS Case 2019–D029 were addressed in the second proposed rule, DFARS Case 2020–D033.

Section 848 modified 10 U.S.C. 2380(b) to provide that a contract for an item using FAR part 12 procedures shall serve as a prior commercial item determination, unless the appropriate official determines in writing that the use of such procedures was improper or that it is no longer appropriate to acquire the item using commercial item acquisition procedures. On January 1, 2021, 10 U.S.C. 2380(b) was redesignated as 10 U.S.C. 2380(c) in accordance with section 816 of the NDAA for FY 2021 (Pub. L. 116–283). Three respondents submitted comments in response to the proposed rule for DFARS Case 2020–D033.

This final rule does not replace the term “commercial item” with “commercial product” and/or “commercial service” in accordance with section 836 of the NDAA for FY 2019 (Pub. L. 115–232). This change is addressed in DFARS Case 2018–D066, which implements section 836.

#### II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule are provided, as follows:

##### A. Summary of Significant Changes From the Proposed Rule

No changes are made in the final rule as a result of public comments.

##### B. Analysis of Public Comments

##### 1. Exceptions to Implementation

*Comment:* A respondent suggested adding examples of what “other evidence” at DFARS 212.102(a)(ii)

might include “such as, a contract or correspondence from a contracting officer” to assist contracting officers.

*Response:* DoD acknowledges that examples of “other evidence” may be helpful; however, since it not feasible to provide an all-inclusive list of what might constitute “other evidence,” examples may hinder contracting officers’ ability to exercise sound business judgment on a case-by-case basis. DFARS 212.102(a)(ii) already provides that the prior contract may be utilized.

*Comment:* Two respondents recommended revising the proposed rule to clarify that if a prior FAR part 12 contract exists, a new commercial item determination is not required, and another respondent indicated the contracting officer should not be required to perform a search of the commercial item database.

*Response:* As a result of a similar public comment received in response to the proposed rule published under DFARS Case 2019–D029, DFARS paragraph 212.102(a)(iii) was moved to 212.102(a)(ii) to precede the paragraph on commercial item determinations. At the same time, the coverage was rewritten to shift emphasis to the use of prior commercial item determinations and use of prior acquisitions conducted using FAR part 12 commercial item acquisition procedures as a determination. Additionally, there are circumstances in which the prior use of FAR part 12 procedures was for items that were not commercial items but rather items that were only “treated as commercial items” (*i.e.*, procured under the authority of 41 U.S.C. 1903 or 10 U.S.C. 2380a). Therefore, the use of FAR part 12 procedures under these circumstances could not be used as a prior commercial item determination. Furthermore, the applicability of statutory exceptions to treat certain items as commercial is not dependent upon the particular items being purchased; rather it is dependent upon the circumstances of the particular acquisition that cannot be extrapolated to other acquisitions of the same item(s). As such, a contracting officer cannot infer that the use of FAR part 12 procedures means that the acquisition is always appropriate to serve as a commercial item determination, and a review of the commercial item database may be warranted.

*Comment:* A respondent indicated that the exclusion of the use of FAR part 15 procedures for an item or service previously procured using FAR part 12 procedures should be included in this rule.

*Response:* This exclusion was addressed in the final rule at DFARS 212.102(a)(ii)(B)(1).

*Comment:* Two respondents took exception to the requirement for the contracting officer to document the file.

*Response:* Section 848 of the NDAA for FY 2018 modified 10 U.S.C. 2380 to preclude the need for a commercial item determination under certain circumstances. This rule allows for the reliance on a prior commercial item determination or “some other evidence;” therefore, this rule will minimize the contract file documentation required where a prior commercial item determination exists. However, that does not preclude the contracting officer’s responsibility to conduct market research and to document the file accordingly.

*Comment:* A respondent recommended the Commercial Item Database reference be placed in DFARS Procedures, Guidance, and Information (PGI) rather than at DFARS 212.102(a)(ii) since section 848 of the NDAA for FY 2018 does not address it.

*Response:* Although the Commercial Item Database is not referenced in section 848 of the NDAA for FY 2018, it is mandated by 10 U.S.C. 2380(a); therefore, it is appropriate to reference it at the DFARS level.

## 2. Outside the Scope of the Rule

*Comment:* A respondent indicated the requirement to obtain higher level approval at DFARS 212.102(a)(iii)(C) should be removed.

*Response:* The higher level approval at DFARS 212.102(a)(iii)(C) is applicable when the “Prior use of FAR part 12 procedures” at DFARS 212.102(a)(ii) is not applicable, and the commercial item determination relies on paragraphs (1)(ii), (3), or (4) of the “commercial product” definition at FAR 2.101 or paragraph (2) of the “commercial service” definition at FAR 2.101. The requirement for higher level approval was added to the DFARS on March 12, 2012, as a result of a recommendation of the Panel on Contracting Integrity included in its 2009 Report to Congress concerning compliance with the DFARS documentation requirements for commercial item determinations. In its report, the Panel concluded that determinations were not always sufficiently documented; therefore, the DFARS was modified to require approval at one level above the contracting officer for commercial acquisitions that are based on “of a type” commercial procurements or items “offered for sale” but not yet sold to the general public. This approval does not conflict with the changes made

to 10 U.S.C. 2380 by section 848 of the NDAA for FY 2018, and the basis for it is still valid.

*Comment:* A respondent recommended the Commercial Item Database be expanded to include information regarding commercial awards.

*Response:* 10 U.S.C. 2380(a) sets forth the requirements for the Commercial Item Database, whereas information regarding contract awards is available via other means such as the Federal Procurement Data System; therefore, it is not necessary to expand the Commercial Item Database to replicate data available elsewhere.

## C. Other Changes

DFARS 212.102(a)(iii) is modified to specify that commercial item determinations are only required for acquisitions that exceed the simplified acquisition threshold (SAT). The proposed rule eliminated the \$1 million threshold for commercial item determinations, which was based on policy to avoid overly burdensome requirements on lower dollar value acquisitions. If contracting officers are accepting prior use of FAR part 12 procedures, even below \$1 million, as a commercial item determination for subsequent buys, then it is necessary to apply the same standards at any dollar value, as these determinations can form the basis for much larger acquisitions. However, requiring commercial item determinations for acquisitions between the micro-purchase threshold and those at or below the SAT would impose an overly burdensome requirement for Government personnel. DoD also recognizes the elimination of the \$1 million threshold could result in an administrative burden on contractors if the requirement for a commercial item determination is imposed at or below the SAT. Therefore, DFARS 212.102(a)(iii) is modified to reflect the internal operating procedures of the Government to specify that commercial item determinations are only required for acquisitions that exceed the SAT.

## III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products Including Commercially Available Off-the-Shelf Items, and for Commercial Services

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts valued at or below the simplified acquisition threshold, for commercial products including

commercially available off-the-shelf items, or for commercial services.

#### IV. Expected Impact of the Rule

This final rule is expected to benefit the Government and contractors as it streamlines FAR part 12 and commercial item determination processes and procedures. Since this rule will allow a contracting officer to rely on a prior commerciality determination in the Commercial Item Database, a prior contract, or other evidence that an item has previously been procured by DoD using commercial item acquisition procedures under FAR part 12, it will preclude the need to prepare a commercial item determination and, as such, preclude the need for contractors to provide information to the Government to support a commercial item determination. Therefore, this rule is expected to benefit both the Government and contractors. Given that this rule streamlines internal Government processes and procedures and, as a consequence, benefits contractors, there is no expected cost to contractors.

#### V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

#### VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

#### VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is necessary in order to further implement section 848 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018, which modified 10 U.S.C. 2380(b) (redesignated, as of January 1, 2021, as 10 U.S.C. 2308(c) in accordance with section 816 of the NDAA for FY 2021 (Pub. L. 116–283)). The objective of this rule is to address the use of Federal Acquisition Regulation (FAR) part 12 procedures and commercial item determinations. If the DoD Commercial Item Database contains a prior commercial item determination, or the contracting officer has other evidence that an item has previously been acquired by DoD using commercial item acquisition procedures under FAR part 12, the prior contract shall serve as a determination that an item is a commercial item.

No significant issues were raised by the public comments received in response to the initial regulatory flexibility analysis.

DoD awarded an average of 24,446 new contracts to an average of 11,297 unique entities (including 7,344 small businesses) each year from FY 2018 through FY 2020. However, this rule is not expected to have a significant impact on small entities because the rule is not implementing any requirements with which small entities must comply. This rule impacts Government internal operating procedures for commercial item determinations for products and services offered to the Government.

This final rule does not impose any new reporting, recordkeeping, or other compliance requirements.

DoD did not identify any significant alternatives that would minimize or reduce the significant economic impact on small entities, because no significant impact is expected. Any impact is expected to be beneficial.

#### VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Part 212

Government procurement.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR part 212 is amended as follows:

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for part 212 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Revise section 212.102 to read as follows:

##### 212.102 Applicability.

(a)(i) *Use of FAR part 12 procedures.* Use of FAR part 12 procedures is based on—

(A) A determination that an item is a commercial item (see paragraph (a)(iii) of this section); or

(B) Applicability of one of the following statutes that provide for treatment as a commercial item and use of FAR part 12 procedures, even though the item may not meet the definition of “commercial product” or “commercial service” at FAR 2.101 and does not require a commercial item determination:

(1) 41 U.S.C. 1903—Supplies or services to be used to facilitate defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack pursuant to FAR 12.102(f).

(2) 10 U.S.C. 2380a—Supplies or services from nontraditional defense contractors pursuant to 212.102(a)(iv).

(ii) *Prior use of FAR part 12 procedures.* (A) Pursuant to 10 U.S.C. 2380(c), except as provided in paragraph (a)(ii)(B) of this section or unless the item was acquired pursuant to paragraph (a)(i)(B) of this section, if the Commercial Item Database (for website see PGI 212.102(a)(iii)(B)(4)) contains a prior commerciality determination, or the contracting officer has other evidence that an item has previously been acquired by DoD using commercial item acquisition procedures under FAR part 12, then the prior contract shall serve as a prior determination that an item is a commercial item. The contracting officer shall document the file accordingly.

(B)(1) If the item to be acquired meets the criteria in paragraph (a)(ii)(A) of this section, the item may not be acquired using other than FAR part 12 procedures unless the head of the contracting activity issues a

determination as specified in paragraph (a)(ii)(B)(2)(ii) of this section.

(2) Pursuant to 10 U.S.C.

2306a(b)(4)(A), the contracting officer may presume that a prior commercial item determination made by a military department, a defense agency, or another component of DoD shall serve as a determination for subsequent procurements of such item. In accordance with 10 U.S.C. 2306a(b)(4) and 10 U.S.C. 2380(c), if the contracting officer questions a prior determination to use FAR part 12 procedures and instead chooses to proceed with a procurement of an item previously determined to be a commercial item using procedures other than FAR part 12 procedures, the contracting officer shall request a review by the head of the contracting activity that will conduct the procurement. Not later than 30 days after receiving a request for review, the head of the contracting activity shall—

(i) Confirm that the prior use of FAR part 12 procedures was appropriate and still applicable; or

(ii) Issue a determination that the prior use of FAR part 12 procedures was improper or that it is no longer appropriate to acquire the item using FAR part 12 procedures, with a written explanation of the basis for the determination.

(iii) *Commercial item determination.* Unless the procedures in paragraph (a)(ii) of this section are applicable, when using FAR part 12 procedures for acquisitions of commercial items pursuant to 212.102(a)(i)(A) that exceed the simplified acquisition threshold, the contracting officer shall—

(A) Determine in writing that the acquisition meets the commercial product or commercial service definition in FAR 2.101;

(B) Include the written determination in the contract file;

(C) Obtain approval at one level above the contracting officer when a commercial item determination relies on paragraph (1)(ii), (3), or (4) of the “commercial product” definition at FAR 2.101 or paragraph (2) of the “commercial service” definition at FAR 2.101; and

(D) Follow the procedures and guidance at PGI 212.102(a)(iii) regarding file documentation and commercial item determinations.

(iv) *Nontraditional defense contractors.* In accordance with 10 U.S.C. 2380a, contracting officers—

(A) Except as provided in paragraph (a)(iv)(B) of this section, may treat supplies and services provided by nontraditional defense contractors as commercial items. This permissive authority is intended to enhance

defense innovation and investment, enable DoD to acquire items that otherwise might not have been available, and create incentives for nontraditional defense contractors to do business with DoD. It is not intended to recategorize current noncommercial items; however, when appropriate, contracting officers may consider applying commercial item procedures to the procurement of supplies and services from business segments that meet the definition of “nontraditional defense contractor” even though they have been established under traditional defense contractors. The decision to apply commercial item procedures to the procurement of supplies and services from nontraditional defense contractors does not require a commercial item determination and does not mean the item is commercial;

(B) Shall treat services provided by a business unit that is a nontraditional defense contractor as commercial items, to the extent that such services use the same pool of employees as used for commercial customers and are priced using methodology similar to methodology used for commercial pricing; and

(C) Shall document the file when treating supplies or services from a nontraditional defense contractor as commercial items in accordance with paragraph (a)(iv)(A) or (B) of this section.

(v) *Commercial item guidebook.* For a link to the commercial item guidebook, see PGI 212.102(a)(v).

#### **Subpart 212.70 [Removed and Reserved]**

■ 3. Remove and reserve subpart 212.70, consisting of sections 212.7000 and 212.7001.

[FR Doc. 2022–08812 Filed 4–27–22; 8:45 am]

BILLING CODE 5001–06–P

### **DEPARTMENT OF DEFENSE**

#### **Defense Acquisition Regulations System**

#### **48 CFR Parts 217, 234, and 235**

[Docket DARS–2021–0020]

RIN 0750–AL49

#### **Defense Federal Acquisition Regulation Supplement: Contract Authority for Development and Demonstration of Prototypes (DFARS Case 2021–D025)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that amends the types of line items and contract options that may be included, subject to limitations, in certain contracts initially awarded pursuant to competitive solicitations.

**DATES:** Effective April 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara J. Salcido, telephone 571–372–6102.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

DoD published a proposed rule in the **Federal Register** at 86 FR 59951 on October 29, 2021, to revise the DFARS to implement paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 831(a)(2) amends 10 U.S.C. 2302e(a) to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement.

One respondent submitted a public comment in response to the proposed rule.

##### **II. Discussion and Analysis**

DoD reviewed the public comment in the development of the final rule. The public comment is outside the scope of this rule; therefore, there are no changes made to the final rule.

##### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services**

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses or their applicability to contracts at or below the simplified acquisition threshold, for commercial products including COTS items, or for commercial services.

##### **IV. Expected Impact of the Rule**

The final rule impacts DoD acquisition planning decisions for contract awards that will result from the competitive selection of a proposal in response to a broad agency announcement for which DoD intends to include a contract line item or option

for the development and demonstration of technology developed under the contract. The final rule broadens the scope of effort for which these contract line items and contract options can be awarded and the type of funding that may be used to fund these line items or options. This final rule also helps streamline the process for moving technologies developed under such contracts from science and technology into production.

#### V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

#### VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule under 5 U.S.C. 804.

#### VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule implements paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). The objective of this rule is to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement.

When awarding such a contract, contracting officers may now include a contract line item or contract option for the “development and demonstration” of technology developed under the contract. This revision provides a broader scope of effort and funding for which these contract line items and contract options can be awarded, which in turn helps streamline the process for moving technologies developed under such contracts from science and technology into production.

There were no significant issues raised by public comments in response to the initial regulatory flexibility analysis.

Based on data from the Federal Procurement Data System for FY 2018 through FY 2020, on average, DoD annually awards 300 contracts to 200 unique small entities using the competitive selection of proposals resulting from a broad agency announcement.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements.

There are no significant alternatives to this rule that would accomplish the objective of the statute.

#### VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Parts 217, 234, and 235

Government procurement.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 217, 234, and 235 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217, 234, and 235 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### PART 217—SPECIAL CONTRACTING METHODS

■ 2. Amend section 217.202 by revising paragraph (2) to read as follows:

##### 217.202 Use of options.

\* \* \* \* \*

(2) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005–1 for the use of contract options for the development and demonstration or

initial production of technology developed under the contract or the delivery of initial or additional items.

#### PART 234—MAJOR SYSTEM ACQUISITION

■ 3. Amend section 234.005–1 by revising the introductory text and paragraph (1) to read as follows:

##### 234.005–1 Competition.

A contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (see 235.016) may contain a contract line item or contract option using funds not limited to those identified in 235.016 for the development and demonstration or initial production of technology developed under the contract, or the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract, only when it adheres to the following limitations:

(1) The contract line item or contract option shall be limited to the delivery of the minimal amount of initial or additional items or prototypes that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

\* \* \* \* \*

#### PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

■ 4. Amend section 235.006–71 by revising paragraph (b) to read as follows:

##### 235.006–71 Competition.

\* \* \* \* \*

(b) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005–1 for the use of contract line items or contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

[FR Doc. 2022–08815 Filed 4–27–22; 8:45 am]

BILLING CODE 5001–06–P

**DEPARTMENT OF DEFENSE****48 CFR Parts 225 and 252****[Docket DARS–2021–0018]****RIN 0750–AL29****Defense Federal Acquisition Regulation Supplement: Modification of Small Purchase Threshold Exceptions (DFARS Case 2021–D010)****AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).**ACTION:** Final rule**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021.**DATES:** Effective April 28, 2022.**FOR FURTHER INFORMATION CONTACT:** Ms. Kimberly R. Ziegler, Telephone 571–372–6095.**SUPPLEMENTARY INFORMATION:****I. Background**

DoD published a proposed rule in the *Federal Register* at 86 FR 53931 on September 29, 2021, to implement section 817 of the National Defense Authorization Act (NDAA) of Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 817 amends 10 U.S.C. 2533a (commonly known as the “Berry Amendment”), by reducing the dollar threshold at which an acquisition is excepted from the source restrictions of the Berry Amendment from the simplified acquisition threshold (SAT) to an amount not to exceed \$150,000.

DFARS 225.7002 identifies the domestic source restrictions of 10 U.S.C. 2533a on food, clothing, fabrics, fibers, hand or measuring tools, and flags, unless an exception applies. DFARS 225.7002–2, Exceptions, has historically referred to “actions at or below the small purchase threshold,” rather than a specific dollar value, as an exception to the domestic source restrictions of the Berry Amendment. As a result, each time the SAT increased, the exception threshold also increased to align with the new SAT, to include the most recent SAT increase to \$250,000. Federal Acquisition Regulation (FAR) Case 2018–004, published July 2, 2020 (85 FR 40064) raised the SAT at FAR 2.101 from \$150,000 to \$250,000.

Three respondents submitted public comments in response to the proposed rule.

**II. Discussion and Analysis**

DoD reviewed the public comments in the development of the final rule. One

respondent provided a comment that did not support the rule for reasons that were outside of the scope of this rule. A discussion of the comments is provided, as follows:

*A. Summary of Significant Changes From the Proposed Rule*

There are no changes from the proposed rule as a result of public comments.

*B. Analysis of Public Comments*

## 1. Support for the Rule

*Comment:* Some respondents supported the rule.

*Response:* DoD acknowledges the support.

## 2. Splitting Requirements

*Comment:* Respondents are concerned that without expressly stating that contracts cannot be broken into smaller contract actions, contracting officers will split requirements to avoid applying the restrictions set forth in 10 U.S.C. 2533a.

*Response:* Basic contracting officer training already provides direction to the contracting workforce about splitting contract actions to avoid application of regulatory requirements. Additional direction is unnecessary to ensure compliance with this rule.

*C. Other Changes*

Minor changes are made in paragraph (m) of DFARS 225.7002–2 to remove text that is not necessary. In paragraph (c) of DFARS clause 252.225–7012, Preference for Certain Domestic Commodities, minor changes are made to delete an acronym that is no longer needed and to clarify that the reference to “225.7002–2(a)” is a reference to DFARS 225.7002–2(a).

**III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products Including Commercially Available Off-the-Shelf (COTS) Items, and for Commercial Services**

This rule amends the applicability of the following DFARS clauses: (1) 252.225–7006, Acquisition of the American Flag; (2) 252.225–7012, Preference for Certain Domestic Commodities; and (3) 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools. DoD does intend to apply the rule to contracts valued above \$150,000 but at or below the SAT. The clauses impacted by the rule are already prescribed for use in solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products including COTS items.

*A. Applicability to Contracts at or Below the Simplified Acquisition Threshold*

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD does intend to make that determination. Therefore, this rule will apply above \$150,000 but at or below the simplified acquisition threshold.

*B. Determination*

DoD plans to apply the rule to contracts valued above \$150,000 but at or below the SAT for the following DFARS clauses: (1) 252.225–7006, Acquisition of the American Flag; (2) 252.225–7012, Preference for Certain Domestic Commodities; (3) 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools.

Not applying these clauses to contracts valued above \$150,000 but at or below the SAT would exclude contracts intended to be covered by this rule and undermine the overarching purpose of the rule, which is to increase the number of acquisitions subject to the domestic source restrictions at DFARS 225.7002 by reducing the volume of procurements subject to the exception at DFARS 225.7002–2(a). The clauses already apply to commercial products including COTS items.

**IV. Expected Impact of the Rule**

DFARS 225.7002 identifies the domestic source restrictions of 10 U.S.C. 2533a on food, clothing, fabrics, fibers, hand or measuring tools, and flags, unless an exception at DFARS 225.7002–2 applies. Acquisitions valued below the SAT, currently defined at FAR 2.201 as \$250,000, are excepted from the domestic source restrictions of the Berry Amendment.

This rule implements section 817 of the NDAA for FY 2021 by reducing the exception threshold from the SAT to \$150,000. DoD expects the reduction required by section 817 to result in an

increase in the number of procurements of domestically sourced end products that are subject to 10 U.S.C. 2533a.

DoD estimates that approximately 970 procurements valued between \$150,000 and the SAT of \$250,000 are awarded to an estimated 400 entities annually, based upon data obtained from the Federal Procurement Data System (FPDS) for fiscal years 2018 through 2020. Until the final rule for FAR case 2018–004 (85 FR 40064), which increased the SAT from \$150,000 to \$250,000, became effective on August 31, 2020, these entities were required to comply with domestic source restrictions of the Berry Amendment, including the \$150,000 exception threshold. It has only been since August 31, 2020, that these entities have had the benefit of the higher exception threshold (*i.e.*, the SAT of \$250,000). DoD assumes that some of these entities may have adjusted their procurement sources in the short time since the threshold was raised, while some may have continued with their established supply chains. There is currently no data source that would identify the entities that made adjustments and would have to return to their previous practices.

#### V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

#### VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules Under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and to the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has

determined that this rule is not a major rule as defined by 5 U.S.C. 804.

#### VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule amends the DFARS to implement section 817 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116–283). Section 817 reduces the dollar threshold exception at DFARS 225.7002, which implements 10 U.S.C. 2533a (commonly known as the “Berry Amendment”), from the simplified acquisition threshold (SAT) to an amount not to exceed \$150,000.

The objective of the rule is to increase the number of procurements subject to the domestic source requirements at DFARS 225.7002 by reducing the number of procurements subject to the exception at DFARS 225.7002–2(a).

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

This rule is expected to affect small entities that participate in procurements subject to the domestic source restrictions at DFARS 225.7002. However, DoD does not expect a significant change in the number of actions awarded to small entities resulting from the reduction in the threshold from the current SAT of \$250,000 to \$150,000. To assess the impact of this reduction, data was obtained from the Federal Procurement Data System (FPDS). According to FPDS for fiscal years 2018 through 2020, DoD awarded an average of approximately 970 applicable actions valued above \$150,000 but below the SAT. Of those actions, an average of 200 contract actions was awarded to approximately 72 unique small entities.

The rule does not impose any new reporting, recordkeeping, or compliance requirements.

There are no practical alternatives that will accomplish the objectives of the statute.

#### VIII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

**Jennifer D. Johnson,**  
*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR Chapter 1.

#### PART 225—FOREIGN ACQUISITION

##### 225.7002–2 [Amended]

■ 2. Amend section 225.7002–2:

■ a. In paragraph (a), by removing “at or below the simplified acquisition threshold” and adding “not exceeding \$150,000” in its place;

■ b. In paragraph (j)(2), by removing “simplified acquisition threshold” and adding “threshold at 225.7002–2(a)” in its place;

■ c. In paragraphs (m)(1)(ii) and (iv), by removing “Product or Service Group (PSG)” and adding “PSG” in its place.

##### 225.7002–3 [Amended]

■ 3. Amend section 225.7002–3, in paragraphs (b) and (c), by removing “simplified acquisition threshold” and adding “threshold at 225.7002–2(a)” in its place.

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 252.225–7012 [Amended]

■ 4. Amend section 252.225–7012 by—

■ a. Removing the clause date “(MAR 2022)” and adding “(APR 2022)” in its place;

■ b. In paragraph (a), in the definition of “Structural component of a tent”, redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively, and at the end of the newly redesignated paragraph (1) removing the semicolon and adding “; and” in its place;

■ c. In paragraph (c)(1), removing “(FAR)”;

■ d. In paragraph (c)(2)(ii), removing “simplified acquisition threshold in FAR part 2” and adding “threshold at Defense Federal Acquisition Regulation Supplement 225.7002–2(a)” in its place.

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**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Parts 227 and 252**

[Docket DARS–2019–0048]

RIN 0750–AK71

**Defense Federal Acquisition Regulation Supplement: Validation of Proprietary and Technical Data (DFARS Case 2018–D069)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that amended the statutory presumption of development exclusively at private expense for commercial items in the procedures governing the validation of asserted restrictions on technical data.

**DATES:** Effective April 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mr. David E. Johnson, telephone 202–913–5764.

**SUPPLEMENTARY INFORMATION:****I. Background**

DoD published a proposed rule in the *Federal Register* at 85 FR 53755 on August 31, 2020, to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), which repeals several years of congressional adjustments to the statutory presumption of development at private expense for commercial items in the validation procedures at paragraph (f) of 10 U.S.C. 2321. The DFARS implementation of this mandatory presumption has evolved accordingly to track the statutory changes, with the primary coverage found at paragraph (c) of section 227.7103–13, and paragraph (b) of the contract clause at 252.227–7037, Validation of Restrictive Markings on Technical Data. One respondent submitted written public comments in response to the proposed rule.

**II. Discussion and Analysis**

DoD reviewed the public comments submitted in writing and discussed by the attendees at the virtual public meeting on November 19, 2020, in the development of the final rule. A discussion of the comments and the

changes made to the rule as a result of those comments is provided, as follows:

*A. Summary of Significant Changes From the Proposed Rule*

Based on comments received, language was added to DFARS 227.7103–13(c) and DFARS 252.227–7037(e) to indicate the information that supports the challenge notice must be included in the challenge notice, subject to handling procedures for classified information or controlled unclassified information (CUI).

*B. Analysis of Public Comments***1. DoD Must Provide Sufficient Information To Support the Challenge Notice**

*Comment:* The respondent requested elimination of the phrase “to the maximum extent practicable” in the proposed revisions to DFARS 227.7103–13(c)(2) and DFARS 252.227–7037(e)(1)(i) and (f) because this phrase does not appear in the underlying statute. The respondent asserted that this language introduces uncertainty as to whether and when the contracting officer must provide sufficient information to overcome the presumption. The respondent asserted that the Government should furnish CUI in the manner in which the Government conventionally furnishes other CUI to contractors. If classified information cannot be provided with the challenge notice in an unclassified communication, then the classified information may be contemporaneously furnished via alternate means that complies with the applicable security requirements.

*Response:* DoD adopted the respondent’s recommendation to remove the phrase “to the maximum extent practicable.” In view of the respondent’s comments, the rule has also been revised to indicate that the challenge notice will include sufficient information to reasonably demonstrate that a commercial item was not developed exclusively at private expense, subject to the handling procedures for classified information and controlled unclassified information. Such handling procedures may include, but are not limited to, contemporaneous communications (referenced in the challenge notice) that consist of classified information transmitted via secured channels.

**2. DoD Should Restore 10 U.S.C. 2320 and 2321 to the DFARS List of Statutes Which Are Inapplicable to Subcontracts for Commercial Items and Eliminate Mandatory Flowdown Requirements**

*Comment:* The respondent recommended that, because section 865 repealed several congressional amendments to the statutory presumption of development exclusively at private expense, 10 U.S.C. 2320 and 2321 should be included in the DFARS 212.504 exclusionary list of statutes that are inapplicable to contracts and subcontracts for the acquisition of commercial items. The respondent also recommended removing the mandatory flowdown requirements in the contract clauses at DFARS 252.227–7013, 252.227–7015, and 252.227–7037.

*Response:* This case implements specific amendments to 10 U.S.C. 2321(f), and the applicability of those implementing revisions to contracts for the acquisition of commercial items is addressed in Section III of this preamble. To the extent the respondent’s recommendations are directed to the applicability of the entirety of 10 U.S.C. 2320 and 2321 to commercial items contracts and subcontracts and extend beyond the proposed implementation of 10 U.S.C. 2321(f), those recommendations are beyond the scope of this case. DoD acknowledges that the respondent’s concerns and recommendations address broader scope issues also raised in the Section 813 Government-Industry Advisory Panel Report, and cognizant DoD policy stakeholders, including the Intellectual Property (IP) Cadre, are considering such issues as part of DoD’s overarching efforts to review and improve its IP policies and implementing procedures.

**3. Mandatory Flowdown Requirements for Supplier Agreements Are Inconsistent With the Federal Acquisition Streamlining Act**

*Comment:* The respondent recommended elimination of mandatory flowdown language in the clauses at DFARS 252.227–7037(l), 252.227–7013(k)(2), and 252.227–7015(e), which require contractors to use the clauses in other contractual instruments for commercial items with suppliers at any tier if the other contractual instruments require the delivery of technical data. The respondent asserted that this mandatory flowdown is both inconsistent with the Federal Acquisition Streamlining Act of 1994 (FASA) and undermines DoD’s efforts to acquire commercial items.

*Response:* This case implements specific amendments to 10 U.S.C. 2321(f), and the applicability of those implementing revisions to contracts for the acquisition of commercial items is addressed in Section III of this preamble. To the extent the respondent's recommendations are directed to the application of the mandatory flowdown requirements for the entirety of multiple clauses to suppliers at any tier and "other contractual instruments" for commercial items and extend beyond implementation of 10 U.S.C. 2321(f), those recommendations are beyond the scope of this case. DoD acknowledges that the respondent's concerns and recommendations address broader scope issues also raised in the Section 813 Government-Industry Advisory Panel Report, and cognizant DoD policy stakeholders, including the IP Cadre, are considering such issues as part of DoD's overarching efforts to review and improve its IP policies and implementing procedures.

#### 4. DFARS 252.227–7013 Should Not Apply to Commercial Items With "Of a Type" or "Minor" Modifications

*Comment:* The respondent noted that the current DFARS policy permits use of both DFARS clauses at 252.227–7013 (for technical data related to noncommercial and commercial technology developed with Government funds) and 252.227–7015 (for technical data related to commercial technology developed at private expense). The respondent expressed concern that this paradigm creates a complicated mix of commercial and noncommercial terms along with potentially costly portion-marking. The respondent also asserted that these rules may discourage companies from selling modified commercial items to the Government. The respondent recommended that the noncommercial technical data rights clause at DFARS 252.227–7013 should not apply to commercial items with "of a type" or "minor" modifications. The respondent stated that DFARS 252.227–7037 and the associated prescriptive guidance should be revised to clarify that Government funds used to modify a commercial item shall not be used as the basis for rebutting the presumption of development exclusively at private expense so long as the modified item continues to meet the commercial item definition at Federal Acquisition Regulation (FAR) 2.101. The respondent also suggested revising DFARS 252.227–7013, 252.227–7015, and the associated guidance for contracting officers to clarify that 252.227–7013 shall not apply to commercial items modified at

Government expense so long as the modified item continues to meet the commercial item definition at FAR 2.101.

*Response:* This case implements specific amendments to 10 U.S.C. 2321(f), and the applicability of those implementing revisions to contracts for the acquisition of commercial items is addressed in Section III of this preamble. To the extent that the respondent's recommendations are directed to the applicability of DFARS 252.227–7013 to commercial items with "of a type" or "minor" modifications and extend beyond implementation of 10 U.S.C. 2321(f), those recommendations are beyond the scope of this case. DoD acknowledges that the respondent's concerns and recommendations address broader scope issues also raised in the Section 813 Government-Industry Advisory Panel Report, and cognizant DoD policy stakeholders, including the IP Cadre, are considering such issues as part of DoD's overarching efforts to review and improve its IP policies and implementing procedures.

#### C. Other Changes

Minor editorial changes are made in DFARS clause 252.227–7037 to the expressed time periods to conform to standard rule drafting conventions.

### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products (Including Commercially Available Off-the-Shelf Items), and for Commercial Services

This rule amends the contract clause at 252.227–7037 and the prescription at DFARS 227.7103–13. However, this rule does not impose any new requirements on contracts at or below the simplified acquisition threshold (SAT), for commercial products (including commercially available off-the-shelf (COTS) items), or for commercial services. The prescription and clause will continue to apply to acquisitions at or below the SAT and to acquisitions of commercial products (including COTS items).

#### A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the Federal Acquisition Regulatory Council

makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD has made that determination. Therefore, this rule does apply to contracts at or below the simplified acquisition threshold.

#### B. Applicability to Contracts for the Acquisition of Commercial Products (Including COTS Items) and Commercial Services

10 U.S.C. 2375 governs the applicability of laws to contracts and subcontracts for the acquisition of commercial products (including COTS items) and commercial services and is intended to limit the applicability of laws to contracts for the acquisition of commercial products (including COTS items) and commercial services. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial product or commercial service contracts, the provision of law will apply to contracts for the acquisition of commercial products or commercial services.

Due to delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination. DoD has made that determination to apply this rule to the acquisition of commercial products (including COTS items), if otherwise applicable.

#### C. Determination

This rule implements statutory requirements regarding the presumption of development at private expense for commercial products (including COTS items) in validations of asserted restrictions. Not applying the rule to contracts at or below the SAT would exclude contracts at low dollar values for commercial products intended to be covered by this rule. An exclusion for contracts at or below the SAT would therefore undermine the overarching purpose of the rule. Therefore, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts valued at or below the SAT.

Given that the requirements of section 865 of the NDAA for FY 2019 were enacted to return to a presumption of development exclusively at private expense for commercial products, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts for the acquisition of commercial products, including COTS items, as those terms are defined at FAR 2.101. An exception for contracts for the acquisition of commercial products, including COTS items, would exclude contracts intended to be covered by the law, thereby undermining the overarching public policy purpose of the law.

#### IV. Expected Impact of the Rule

The final rule applies the statutory requirements regarding the presumption of development at private expense for commercial items in validations of asserted restrictions. Specifically, the rule returns the coverage at DFARS 227.7103–13 and 252.227–7037 substantially back to the original Federal Acquisition Streamlining Act-implementing language with regard to the presumption of development exclusively at private expense for commercial items. This statutory change places the burden of proof on DoD, not on the contractor or subcontractor, for commercial items.

Under the new rule, DoD is required to presume that the contractor or subcontractor has justified the asserted restriction on the basis that the item was developed exclusively at private expense for commercial items, regardless of whether the contractor or subcontractor submits a justification in response to the Government's challenge notice. In such a case, the challenge to the use or release restriction may be sustained only if information provided by DoD demonstrates that the item was not developed exclusively at private expense. Within the validation procedures, the presumption of development at private expense for commercial items is primarily designed to protect the contractors' interests.

The impact of these changes may be positive, for both the public and the Government, because the Government will not initiate challenges when it does not have sufficient information to support the initiation of a challenge. Contractors will not be required to respond to challenges or pre-challenge requests for information regarding commercial items. Therefore, if DoD does not have information demonstrating that a commercial item was not developed exclusively at private expense, a contracting officer may reasonably decide not to initiate a

challenge. DoD does not have data on the number of challenges that may be avoided.

If DoD does not have sufficient information to successfully initiate a challenge to a contractor's restrictive markings on technical data for commercial items, DoD will have to comply with those restrictive markings. Such information may exist but be in the custody and control of the contractor. For contractors, the impact may be positive, as it would limit how DoD could use technical data related to a contractor's commercial item. For the Government, the markings may impact DoD's ability to use the technical data to obtain competitive procurement of an item and thus result in higher costs. DoD does not have data on the number of times this situation is likely to occur.

#### V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

#### VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

#### VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is proposing to implement section 865 of the National Defense Authorization Act (NDAA) for Fiscal

Year (FY) 2019 (Pub. L. 115–232), which revised 10 U.S.C. 2321. Section 865 of the NDAA for FY 2019 repeals amendments to 10 U.S.C. 2321(f) made by the NDAAs for FY 2007 through FY 2016. The impact is to return the DFARS coverage at section 227.7103–13 and the contract clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, substantially back to its original language implementing the Federal Acquisition Streamlining Act of 1994. Section 865 also codifies and revises DoD challenges to contractor-asserted restrictions on technical data pertaining to a commercial item, *i.e.*, DoD is required to presume that the contractor or subcontractor has justified the asserted restriction on the basis that the item was developed exclusively at private expense, regardless of whether the contractor or subcontractor submits a justification in response to the Government's challenge notice. In such a case, the challenge to the use or release restriction may be sustained only if information provided by DoD demonstrates that the item was not developed exclusively at private expense.

There were no public comments received in response to the initial regulatory flexibility analysis.

This final rule will apply to small entities that have contracts with DoD requiring delivery of technical data. Based on data from Electronic Data Access for FY 2018 through FY 2020, DoD estimates that an average of 814 contractors may be impacted by the changes in this final rule. Of those entities, approximately 507 (62 percent) are small entities.

This final rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known alternatives which would accomplish the stated objectives of the applicable statute.

#### VIII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0369, entitled “DFARS Subparts 227.71, Rights in Technical Data; and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.”

**List of Subjects in 48 CFR Parts 227 and 252**

Government procurement.

**Jennifer D. Johnson,**  
Editor/Publisher, Defense Acquisition  
Regulations System.

Therefore, 48 CFR parts 227 and 252 are amended as follows:

■ 1. The authority citation for parts 227 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

**PART 227—PATENTS, DATA, AND COPYRIGHTS**

■ 2. Amend section 227.7103–13 by—

- a. Revising paragraph (c);
- b. In paragraph (d)(2)(i) removing “subsection” and adding “section” in its place; and
- c. Revising paragraph (d)(4).

The revisions read as follows:

**227.7103–13 Government right to review, verify, challenge, and validate asserted restrictions.**

\* \* \* \* \*

(c) *Challenge considerations and presumption*—(1) *Requirements to initiate a challenge*. Contracting officers shall have reasonable grounds to challenge the validity of an asserted restriction. Before issuing a challenge to an asserted restriction, carefully consider all available information pertaining to the assertion.

(2) *Commercial items—presumption regarding development exclusively at private expense*. 10 U.S.C. 2320(b)(1) and 2321(f) establishing a presumption and procedures regarding validation of asserted restrictions for technical data related to commercial items on the basis of development exclusively at private expense. Contracting officers shall presume that a commercial item was developed exclusively at private expense whether or not a contractor or subcontractor submits a justification in response to a challenge notice. The contracting officer shall not challenge a contractor's assertion that a commercial item was developed exclusively at private expense unless the Government can specifically state the reasonable grounds to question the validity of the assertion. The challenge notice shall include sufficient information to reasonably demonstrate that the commercial item was not developed exclusively at private expense. In order to sustain the challenge, the contracting officer shall provide information demonstrating that the commercial item was not developed exclusively at private expense. The challenge notice and all related correspondence shall be

subject to handling procedures for classified information and controlled unclassified information. A contractor's or subcontractor's failure to respond to the challenge notice cannot be the sole basis for issuing a final decision denying the validity of an asserted restriction.

(d) \* \* \*

(4) *Challenge notice*. The contracting officer shall not issue a challenge notice unless there are reasonable grounds to question the validity of an assertion. For commercial items, also see paragraph (c)(2) of this section. The contracting officer may challenge an assertion whether or not supporting documentation was requested under paragraph (d)(2) of this section. Challenge notices shall be in writing and issued to the contractor or, after consideration of the situations described in paragraph (d)(3) of this section, the person asserting the restriction. The challenge notice shall include the information in paragraph (e) of the clause at 252.227–7037.

\* \* \* \* \*

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Amend section 252.227–7037 by—

- a. Revising the section heading;
- b. In the introductory text, removing “27.7104(e)(5)” and adding “227.7104(e)(5)” in its place;
- c. Revising the clause date;
- d. Revising paragraph (b);
- e. In paragraph (c) removing “paragraph (b)(1)” and adding “paragraph (b)” in its place;
- f. In paragraph (d)(2) removing “Contracting Officer shall” and adding “Contracting Officer will” in its place;
- g. Revising paragraphs (e)(1) introductory text and (e)(1)(i);
- h. In paragraph (e)(1)(ii) removing “sixty (60) days” and adding “60 days” in its place;
- i. In paragraph (e)(2) removing “shall” and adding “will” in its place;
- j. In paragraph (e)(3) removing “Contract Disputes” and adding “Contract Disputes,” in its place;
- k. In paragraph (e)(4) removing “shall formulate” and “shall afford” and adding “will formulate” and “will afford” in their places, respectively;
- l. Revising paragraph (f);
- m. In paragraph (g)(1) removing “shall” and “sixty (60) days” wherever they appear and adding “will” and “60 days” in their places, respectively;
- n. Revising paragraph (g)(2)(i);
- o. In paragraph (g)(2)(ii) removing “ninety (90) days” wherever it appears and “ninety (90)-day period” and

adding “90 days” and “90-day period” in their places, respectively;

■ p. In paragraph (g)(2)(iii) removing “ninety (90) days” and “one (1) year” and adding “90 days” and “1 year” in their places, respectively;

■ q. In paragraphs (h)(2)(i) and (ii) removing “Government shall” and adding “Government will” in its place; and

■ r. In paragraph (i) introductory text—

■ i. Removing “three (3) years”

wherever it appears and adding “3 years” in its place; and

■ ii. Removing “disclosure or use” and adding “disclosure, or use” in its place.

The revisions read as follows:

**252.227–7037 Validation of Restrictive Markings on Technical Data.**

\* \* \* \* \*

**Validation of Restrictive Markings on Technical Data (APR 2022)**

\* \* \* \* \*

(b) *Commercial items—presumption regarding development exclusively at private expense*. The Contracting Officer will presume that the Contractor's or a subcontractor's asserted use or release restrictions with respect to a commercial item are justified on the basis that the item was developed exclusively at private expense. The Contracting Officer will not issue a challenge unless there are reasonable grounds to question the validity of the assertion that the commercial item was developed exclusively at private expense.

\* \* \* \* \*

(e) \* \* \*

(1) Notwithstanding any provision of this contract concerning inspection and acceptance, if the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer will send a written challenge notice to the Contractor or subcontractor asserting the restrictive markings. The challenge notice and all related correspondence shall be subject to handling procedures for classified information and controlled unclassified information. Such challenge will—

(i) State the specific grounds for challenging the asserted restriction including, for commercial items, sufficient information to reasonably demonstrate that the commercial item was not developed exclusively at private expense;

\* \* \* \* \*

(f) *Final decision when Contractor or subcontractor fails to respond*. Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice the Contracting Officer will issue a final decision to the Contractor or

subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial items, the Contracting Officer will provide information demonstrating that the commercial item was not developed exclusively at private expense. This final decision will be issued as soon as possible after the expiration of the time period of paragraph (e)(1)(ii) or (e)(2) of this clause. Following issuance of the final decision, the Contracting Officer will comply with the procedures in paragraphs (g)(2)(ii) through (iv) of this clause.

(g) \* \* \*

(2)(i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer will issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause of this contract. In order to sustain the challenge for commercial items, the Contracting Officer will provide information demonstrating that the commercial item was not developed exclusively at private expense. Notwithstanding paragraph (e) of the Disputes clause, the final decision will be issued within 60 days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

\* \* \* \* \*

[FR Doc. 2022-08811 Filed 4-27-22; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 232 and 252

[Docket DARS-2022-0009]

RIN 0750-AL53

#### Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision "Payment in Local Currency (Afghanistan)" (DFARS Case 2022-D001)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal

Acquisition Regulation Supplement (DFARS) to remove a solicitation provision that is no longer necessary.

**DATES:** Effective April 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** Ms. Barbara J. Salcido, telephone 571-372-6102.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

As required at DFARS subpart 232.72, Payment in Local Currency (Afghanistan), DFARS solicitation provision 252.232-7014, Payment in Local Currency (Afghanistan), is included in all solicitations, including solicitations using Federal Acquisition Regulation (FAR) part 12 procedures for the acquisition of commercial items, for performance in Afghanistan. The provision notifies host nation (Afghan) vendors that the contract resulting from the solicitation will be paid in local currency (Afghani) via electronic funds transfer to a local (Afghan) banking institution unless an exception applies. It also notifies host nation vendors that contracts would not be awarded if they did not bank locally. Host nation vendors were required to submit quotations and offers in U.S. dollars, but the contract would be converted to Afghani using the current U.S. budget rate (*i.e.*, U.S. Treasury rate of exchange) upon award.

Due to the drawdown of operations in Afghanistan, the text at DFARS 232.72 and solicitation provision 252.232-7014 are no longer required. The U.S. Department of the Treasury has placed the Taliban, the de facto government in Afghanistan, on the Office of Foreign Assets Control Sanction List. Therefore, payment cannot be made to an Afghan vendor in Afghani via electronic funds to an Afghan banking institution. Consequently, this rule is repealing DFARS subpart 232.72 and solicitation provision 252.232-7014, since these requirements are rendered inoperable with the drawdown of operations in Afghanistan.

##### II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds and has either a significant effect beyond the internal operating procedures of the

agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because the rule is merely removing an obsolete solicitation provision from the DFARS. The rule does not have a significant cost or administrative impact on contractors or offerors and does not have a significant effect beyond DoD's internal operating procedures.

##### III. Applicability to Contracts at or Below the Simplified Acquisition Threshold, for Commercial Products Including Commercially Available Off-the-Shelf Items, and for Commercial Services

This rule only removes obsolete DFARS subpart 232.72, Payment in Local Currency (Afghanistan), and DFARS solicitation provision 252.232-7014, Payment in Local Currency (Afghanistan). The rule does not impose any new requirements on contracts valued at or below the simplified acquisition threshold, for commercial products including commercially available off-the-shelf items, or for commercial services.

##### IV. Executive Orders 12866 and 13563

Executive Orders (E.O.) 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

##### V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has

determined that this rule is not a major rule as defined by 5 U.S.C. 804.

## VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 does not require publication for public comment.

## VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 232 and 252 are amended as follows:

- 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### PART 232—CONTRACT FINANCING

#### Subpart 232.72 [Removed and Reserved]

- 2. Subpart 232.72, consisting of sections 232.7200, 232.7201, and 232.7202, is removed and reserved.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.232–7014 [Removed and Reserved]

- 3. Section 252.232–7014 is removed and reserved.

[FR Doc. 2022–08816 Filed 4–27–22; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 220421–0102]

**RIN 0648–BK74**

#### Pacific Island Fisheries; Pelagic Longline Gear and Operational Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, NMFS prohibits the use of wire leaders in the Hawaii deep-set longline fishery, and requires the removal of fishing gear from any oceanic whitetip shark caught in all of the region's domestic longline fisheries. The rule is intended to increase post-hooking survival of threatened oceanic whitetip sharks.

**DATES:** The final rule is effective May 31, 2022.

**ADDRESSES:** Copies of the Fishery Ecosystem Plan for Pelagic Fisheries of the Western Pacific (FEP) are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808–522–8220, fax 808–522–8226, or [www.wpcouncil.org](http://www.wpcouncil.org).

Copies of the environmental analyses and other supporting documents for this action are available from <https://www.regulations.gov/docket?D=NOAA-NMFS-2021-0099>, or from Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

**FOR FURTHER INFORMATION CONTACT:** David O'Brien, NMFS Pacific Islands Regional Office, Sustainable Fisheries, 808–725–5038.

**SUPPLEMENTARY INFORMATION:** NMFS and the Western Pacific Fishery Management Council (Council) manage the Hawaii (shallow-set and deep-set) and America Samoa longline fisheries under the FEP as authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). These fisheries occasionally catch oceanic whitetip sharks (*Carcharhinus longimanus*). NMFS listed oceanic whitetip sharks as threatened under the Endangered Species Act (ESA) on January 30, 2018 (83 FR 4153). In an effort to improve survival of oceanic whitetip sharks

unintentionally caught in the FEP longline fisheries, this rule prohibits the use of wire leaders, specifically steel wire line within 1 meter of the hook, in the Hawaii deep-set fishery. Wire leaders are difficult for sharks to bite off and free themselves and difficult for fishermen to cut from deck height as compared to alternative monofilament leaders. The rule also requires, with limited exceptions for safety and data collection, that fishermen remove fishing gear from any oceanic whitetip shark caught in all longline fisheries operating under the FEP. The rule is intended to reduce the amount of fishing gear (aka, trailing gear) attached to released oceanic whitetip sharks. Long trailing gear reduces survivorship of oceanic whitetip sharks unintentionally caught in the fisheries.

You may find additional background information on this action in the preamble to the proposed rule published on January 19, 2022 (87 FR 2742).

### Comments and Responses

On January 19, 2022, NMFS published a proposed rule, an Environmental Assessment (EA), and Regulatory Impact Review (RIR) for public comment (86 FR 2742). The comment period ended February 18, 2022. We received 46 comments from individuals and 2 from organizations. In general, all comments supported the proposed rule. All comments related to the proposed rule; there were no comments directed at analysis presented in the EA or the RIR. We summarize and respond to the comments here, combining substantially similar comments.

**Comment 1:** Many commenters expressed strong support for the proposed rule noting the importance of sharks to marine ecosystem and threats to the species, including fisheries interactions and climate change.

**Response:** NMFS agrees and will continue to manage and regulate Federal fisheries for sustainability, and to minimize bycatch, bycatch mortality, and interactions with protected species consistent with the Magnuson-Stevens Act, the ESA, the FEP, and implementing regulations.

**Comment 2:** Several commenters expressed strong support for the proposed rule, noting benefits to both marine species and fishing industry participants.

**Response:** We agree. Building from an industry-led initiative and recommendation from the Council, the Council and NMFS developed this rule to improve post-hooking survival of threatened oceanic whitetip sharks

while minimizing economic impacts to fishermen. Other species of sharks and protected species that are too large to be brought aboard fishing vessels to remove fishing gear are expected to benefit as well. The EA and RIR evaluated the economic impact of the rule and found the potential for an overall reduction in costs to fishermen for gear repair and replacement, and potential increase in catchability of target fish species like tuna.

*Comment 3:* Several commenters suggested handling requirements should be extended to all species of sharks and rays that interact with longline fisheries, including specific mention of silky sharks.

*Response:* This rule is specifically aimed at improving post-hooking survival of ESA-listed oceanic whitetip sharks incidentally hooked in these longline fisheries and we anticipate a more than 30 percent decrease in post-hooking mortality of oceanic whitetip sharks as a result. Interactions with silky sharks are rare in FEP longline fisheries. NMFS estimates U.S. longline fisheries catch, on average, 0.8 percent or less of the total silky shark catch in the Western and Central Pacific Ocean (WCPO). The species is not listed under the ESA and the WCPO stock is not overfished, but it is experiencing overfishing. Consistent with requirements of the Magnuson-Stevens Act, the Council has made recommendations to the U.S. Secretary of State and the U.S. Congress for international actions that will end overfishing of silky sharks, taking into account the relative impact of vessels of the United States and other nations on the stock. Extending these handling regulations to all shark and ray species would exceed the purpose and need for the action, but we are optimistic that the ease of removing monofilament nylon leaders relative to wire leaders will result in less trailing gear on other sharks and other bycatch species, particularly animals that are too large to be brought onboard the vessel to facilitate release and gear removal. The regulated longline fisheries also currently adhere to international shark handling and release requirements of regional fisheries management organizations in the Pacific to which the United States is a member, including the Western and Central Pacific Fisheries Commission (WCPFC) and Inter-American Tropical Tuna Commission (IATTC). Federal fisheries are managed under a suite of requirements designed to reduce the likelihood and severity of effects of unintentional and incidental interactions with protected and other

non-target species, and that allow monitoring of interactions. NMFS continually evaluates monitoring and scientific information to determine whether they change our understanding of the potential effects of our management decisions and prepares supplemental environmental analyses, as appropriate.

*Comment 4:* Several commenters said all longline fisheries should stop using wire leaders, with one noting that because shark fishing is now illegal in Hawaii a prohibition on wire leaders is appropriate.

*Response:* This rule is intended to prohibit the use of wire leaders in the Hawaii deep-set longline fishery. The Hawaii shallow-set and American Samoa longline fisheries do not use wire leaders and a prohibition is not currently necessary for these fisheries. We note that the longline fisheries covered by this rule fish outside Hawaii State waters in the Exclusive Economic Zone or Federal waters, generally 3–200 nautical miles from shore, around American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Hawaii, the U.S. Pacific Remote Island Areas, and on adjacent high seas. Ending the use of wire leaders in the only U.S. Pacific longline fishery that uses this gear could serve as a model for regional fisheries management organizations, like the WCPFC and IATTC, to consider in bycatch management for longline fleets of all nations fishing in the Pacific Ocean.

*Comment 5:* One commenter expressed support for the action to ensure a better survival rate of critically endangered species and to prevent pollution of the ocean.

*Response:* Please see our response to *Comments 1–3* above regarding expected improvements in post-hooking survival rates. When fishing, all longliners occasionally lose hooks, mainline, floats, float lines, and branch lines, which include hooks, lead weights, and leaders in the deep-set fishery. This derelict longline gear may impact marine benthic habitats, especially substrate such as corals if carried by currents to shallow depths. Fishermen do try to recover gear, and are normally successful. The floats used in the fishery are marked to be visible from distance, even at night. We do not expect this rule to change the frequency that gear is lost in FEP fisheries, so do not expect an increase in the amount of pollution.

*Comment 6:* Many commenters noted that the prohibition of wire leaders will improve shark survival and safety for fishermen.

*Response:* Please see our response to *Comments 1–3* above regarding shark survival. Prohibiting wire leaders has the potential to decrease safety for fishermen because fly backs are more common when using the alternative monofilament nylon leaders. As noted in the EA, we are working with vessel owners and operators and the Hawaii Longline Association (HLA) to educate fishermen about the risks and how to minimize them, including training on construction and use of a reusable fly back prevention device from inexpensive materials readily available on longline vessels.

*Comment 7:* One commenter noted the proposed rule does not support a prohibition on light sticks.

*Response:* Existing regulations prohibit light sticks in the Hawaii deep-set longline fishery and they are not the subject of this rule.

*Comment 8:* A comment letter, signed by five organizations, supported EA alternative 3 that would prohibit wire leaders and require specific handling of oceanic whitetip sharks in all longline fisheries operating under the FEP for consistency, to ease enforcement, and to strengthen U.S. positions in international fishery negotiations.

*Response:* As stated in EA section 2.4.2 and described in our response to *Comment 4* above, the Council's recommendation for alternative 2 was based on the determination that a regulatory prohibition of wire leaders is not necessary in other FEP fisheries because wire leaders are only used in the Hawaii deep-set longline fishery. NMFS and the Council attempt to minimize unnecessary regulation and focus on achieving the stated purpose and need for any action. This rule as described in EA alternative 2, option B, meets the purpose and need. There are no consistency or enforcement concerns as all three fisheries already have a suite of regulations that are fishery specific. International adoption of wire leader prohibitions would be beneficial for threatened oceanic whitetip sharks and we hope this rule will help influence that; however, consistency in U.S. domestic regulations is not a prerequisite to development or adoption of U.S. positions or activities related to international fisheries management.

*Comment 9:* A comment letter, signed by five organizations, recommended extending handling requirements to all shark species and adding requirements to keep all incidentally caught sharks in the water with water flowing over their gills, prohibit gaff use, and require the vessel operator to supervise crew during any shark handling. This commenter also recommended requiring annual

shark handling training for all crewmembers, and post a NMFS-approved placard with release procedures on all longline vessels. Rationales for these recommendations included the Magnuson-Stevens Act requirement to minimize bycatch mortality and consistency with shark handling guidelines from regional fisheries management organizations.

**Response:** Regarding the recommendation to extend handling requirements to all shark species, see our response to *Comment 3*. Additional handling requirements such as those suggested were not recommended for this action. NMFS and the Council recognize the importance of training associated with implementation of this rule, particularly regarding crew safety. Owners and operators of longline vessels are required to annually attend a NMFS protected species workshop where handling requirements and recommendations are reviewed. Those workshops provide information to owners and operators to distribute to crews, including illustrated protected species handling guides in English, Indonesian, Vietnamese, and Tagalog (the languages most commonly spoken by fishermen in the FEP fisheries). The HLA also provides the same illustrated handling guides online.

**Comment 10:** A comment letter, signed by five organizations, recommended additional gear requirements including a minimum depth requirement of 100 meters for hooks in the Hawaii deep-set longline fishery, the use of corrodible non-stainless circle hooks, and a circle hook requirement for the American Samoa longline fishery. The stated rationales for these recommendations included research that suggests removal of shallow hooks could nearly double the mortality rate reduction seen with the proposed rule, consistency with other U.S. fisheries, ease of enforcement, and strengthening U.S. positions in international fishery negotiations for the use of circle hooks in the American Samoa fishery and non-stainless hooks in all FEP fisheries.

**Response:** Removal of shallow hooks was noted in EA section 2.5 as an alternative considered, but rejected from further analysis relative to the purpose and need for the action. Although simulation studies indicate that removing the shallowest hooks would reduce hooking rates of oceanic whitetip sharks, rationales for this rejection included difficulty to operationalize and enforce, uncertainty if the approach would work including lack of evidence of greater hook depth in the American Samoa longline fishery reducing oceanic

whitetip shark interactions, and removing shallow hooks would be expected to reduce revenue in the Hawaii deep-set fishery by \$11–13 million annually.

Non-stainless steel or corrodible hooks were also considered, but rejected from further analysis. As stated in EA section 2.5, rationales for this rejection included a lack of scientific evidence that hook corrosion would improve post-hooking survival and non-stainless steel hooks would need to be replaced more frequently, which could result in negative economic impacts on the fishery.

Regulations to require circle hooks in the American Samoa longline fishery are unnecessary as circle hooks are already used in that fishery. As previously noted, NMFS and the Council seek to minimize unnecessary regulations and focus on the achieving the stated purpose and need for any action.

**Comment 11:** A comment letter, signed by five organizations, recommended NMFS ensure that the rule does not negatively impact other species, including false killer whales and seabirds. Also recommended a minimum diameter of monofilament leaders to ensure that weak hooks for false killer whale protection still function properly and that monofilament leaders do not reduce the efficacy of weighted branch lines in avoiding interactions with seabirds. The stated rationales for these recommendations are that only 10 percent of hooks in false killer whale interactions are straightening, and increasing seabird interactions since 2004.

**Response:** Monitoring of FEP longline fisheries will continue in the future, including mandatory catch logbooks, required vessel monitoring, and NMFS fishery observers. Interactions with protected species are tracked and reported quarterly. Changes in rates of protected species interactions are analyzed across years and can be used to address the efficacy of regulations to mitigate protected species interactions such as with false killer whales and seabirds. Starting in 2022, NMFS observers will collect additional information regarding elasmobranch (shark and ray) interactions, including handling methods and length of trailing gear. With respect to leader diameter, NMFS specifies regulations to mitigate false killer whale interactions at 50 CFR 229.37 including minimum leader and branch line diameters and breaking strengths.

### Changes From the Proposed Rule

The final rule contains no changes from the proposed rule.

### Classification

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable law.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. NMFS received no comments regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

### List of Subjects in 50 CFR Part 665

American Samoa, Endangered and threatened species, Fisheries, Fishing, Hawaii, Longline, Oceanic whitetip sharks, Pacific Islands, Release requirements, Western Pacific.

Dated: April 22, 2022.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 50 CFR part 665 as follows:

### PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.800 revise the definition of “Deep-set or Deep-setting” to read as follows:

#### § 665.800 Definitions.

\* \* \* \* \*

*Deep-set or Deep-setting* means the deployment of longline gear in a manner consistent with all the following criteria: All float lines are at least 20 meters in length; a minimum of 15 branch lines are attached between any two floats (except basket-style longline gear which may have as few as 10

branch lines between any two floats); no metal wire line within 1 meter of the hook; and no light sticks are used. As used in this definition, “float line” means a line used to suspend the main longline beneath a float, and “light stick” means any type of light emitting device, including any fluorescent “glow bead,” chemical, or electrically-powered light that is affixed underwater to the longline gear.

\* \* \* \* \*

■ 3. In § 665.802 add paragraphs (gg) and (hh) to read as follows:

**§ 665.802 Prohibitions.**

\* \* \* \* \*

(gg) Use or have on board longline gear with metal wire line within 1 meter of the hook when operating a vessel registered for use under a longline permit issued under § 665.801(b) at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done, in violation of § 665.813(d).

(hh) Fail to handle and release an oceanic whitetip shark in accordance with the requirements set forth at

§ 665.811(a) when operating a vessel registered for use under any longline permit issued under § 665.801, in violation of § 665.811.

\* \* \* \* \*

■ 4. Add § 665.811 to read as follows:

**§ 665.811 Handling and release of oceanic whitetip sharks.**

(a) The owner and operator of a vessel registered for use under any longline permit issued under § 665.801 must release any oceanic whitetip shark as soon as possible after the shark is caught and brought alongside the vessel, in accordance with 50 CFR 300.226, and must take the following actions:

(1) Leave the animal in the water;

(2) Use a dehooker, as defined in § 665.812(a)(7), or line clippers, as defined in § 665.812(a)(5), to remove trailing gear from the animal.

(3) When using line clippers, the branch line must be cut as close to the hook as possible.

(b) Paragraph (a) of this section does not apply if doing so would compromise the safety of any persons or a WCPFC observer collects, or requests assistance collecting, samples of oceanic whitetip

shark in the Convention Area, as defined in § 300.211 of this title and in accordance with 50 CFR 300.226.

■ 5. In § 665.813 revise paragraph (d) to read as follows:

**§ 665.813 Western Pacific longline fishing restrictions.**

\* \* \* \* \*

(d) Vessels registered for use under a Hawaii longline limited access permit may not have on board at any time during a trip for which notification to NMFS under § 665.803(a) indicated that deep-setting would be done any float lines less than 20 meters in length, longline gear with metal wire line within 1 meter of the hook, or light sticks. As used in this paragraph “float line” means a line used to suspend the main longline beneath a float, and “light stick” means any type of light emitting device, including any fluorescent “glow bead,” chemical, or electrically powered light that is affixed underwater to the longline gear.

\* \* \* \* \*

[FR Doc. 2022–09052 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register

Vol. 87, No. 82

Thursday, April 28, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 30 and 70

[Docket No. NRC-2017-0031]

RIN 3150-AK52

### Decommissioning Financial Assurance for Sealed and Unsealed Radioactive Materials

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory basis; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is requesting comment on a regulatory basis to support a rulemaking that would amend its regulations for decommissioning financial assurance for sealed and unsealed radioactive materials. The rulemaking would revise NRC's decommissioning funding requirements for radioactive material based on the relative risk to public health and safety from different radioisotopes, including naturally occurring and accelerator-produced radioactive material. The potentially affected licensees are those authorized to possess byproduct and special nuclear material.

**DATES:** Submit comments by June 27, 2022. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0031. Address questions about NRC Docket IDs to Dawn Forder; telephone: 301-415-3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* [Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov). If you do not receive an automatic email reply confirming receipt, then contact us at 301-415-1677.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see "Obtaining Information and Submitting Comments" in the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Cardelia Maupin, telephone: 301-415-4127, email: [Cardelia.Maupin@nrc.gov](mailto:Cardelia.Maupin@nrc.gov), or Gregory Trussell, telephone: 301-415-6244, email: [Gregory.Trussell@nrc.gov](mailto:Gregory.Trussell@nrc.gov). Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

#### SUPPLEMENTARY INFORMATION:

#### I. Obtaining Information and Submitting Comments

##### A. Obtaining Information

Please refer to Docket ID NRC-2017-0031 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2017-0031.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the "Availability of Documents" section.

- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please

send an email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

#### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2017-0031 in your comment submission.

NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <https://www.regulations.gov> as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

#### II. Discussion

The NRC is requesting comments on a regulatory basis to support a proposed rule that would amend appendix B, "Quantities of licensed material requiring labeling," to part 30 of title 10 of the *Code of Federal Regulations* (10 CFR), "Rules of General Applicability to Domestic Licensing of Byproduct Material," and 10 CFR 70.25, "Financial assurance and recordkeeping for decommissioning." The regulatory basis document is developed as a precursor to a proposed rule and describes the NRC's recommendation and considerations in amending 10 CFR parts 30 and 70. Appendix B to 10 CFR part 30 is used to determine decommissioning funding requirements for radioactive material licensed under 10 CFR parts 30 and 70.

The proposed rule would address the petition for rulemaking (PRM)-30-66, "Request of the Organization of Agreement States for the NRC to Amend Appendix B, 'Quantities of Licensed

Material Requiring Labeling.’” submitted by the Organization of Agreement States (OAS) on April 14, 2017. In its petition, OAS requested that the NRC conduct a rulemaking to update appendix B to 10 CFR part 30 to include naturally occurring and accelerator-produced radioactive material radionuclides and their specific possession values. The OAS indicated that the failure to include these radionuclides in appendix B to 10 CFR part 30 has placed undue hardships on regulators and licensees with little or no radiation safety benefit, discouraged the development of new beneficial products, and negatively impacted patient care.

The specific objectives of this rulemaking effort are to (1) improve the regulatory framework for naturally occurring and accelerator-produced radioactive material by amending appendix B to 10 CFR part 30 to better align with NRC’s regulatory authority over this material under the Energy Policy Act of 2005; (2) risk-inform NRC’s decommissioning funding requirements by aligning the possession values in appendix B with NRC’s radiation protection regulations in 10 CFR part 20, “Standards for Protection Against Radiation”; (3) clarify that only radioactive materials with half-lives greater than 120 days are subject to decommissioning financial assurance; and (4) clarify the purpose of appendix B by changing its title. To address item 3, the NRC is proposing to update appendix B using the list of radionuclides and possession values in appendix C to 10 CFR part 20, “Quantities of licensed material requiring labeling.”

The NRC held a public meeting on January 7, 2021, to discuss different approaches for updating appendix B to 10 CFR part 30. Members of the public supported updating appendix B to 10 CFR part 30, noting that a faster update to the appendix would be more beneficial than developing a new decommissioning financial assurance methodology. Information about the public meeting is available in the “Availability of Documents” section of this document.

The NRC will consider any comments received on the regulatory basis in the development of the proposed rule and will provide responses to comments in the proposed rule.

### III. Specific Requests for Comments

The NRC is seeking advice and recommendations from the public on

the regulatory basis. We are particularly interested in comments and supporting rationale from the public on the NRC’s initial assumptions regarding the qualitative and quantitative costs and benefits of the rulemaking, as well as on alternatives to the current recommended approach.

#### *Assumptions Used for Cost/Benefit Estimates*

- The NRC is seeking comments on the assumptions used in developing the cost-benefit estimates. The NRC is interested in receiving information on the number of licensees affected by the rulemaking. The NRC is also interested in the effort needed to make any changes to current decommissioning funding plans or decommissioning financial assurance funding amounts, especially if an increase in decommissioning funding would be required.

- The NRC is seeking comments on possible impacts to small entities. Section 2.810, “NRC size standards,” provides specific size standards to determine whether a licensee qualifies as a small entity in its regulatory programs. The NRC is interested in the number of small entities that would be impacted by these changes, as well as the types of impacts the changes being proposed by this rulemaking would have on them.

- The NRC also is seeking comments on other benefits of the rulemaking, such as supporting advancements in science and technology, enabling uses of radioisotopes that would reduce effective doses to patients or overall costs to patients, and reducing costs to licensees who currently must develop decommissioning funding plans. Please provide quantitative information on costs and benefits, if available.

#### *Alternatives to Recommended Approach*

The regulatory basis recommends a rulemaking approach using information that already exists in regulations rather than creating a new methodology for determining the amount of decommissioning financial assurance. The NRC is seeking comments on any benefits to any alternative approach that might not have been considered in the NRC’s assessment, as well as any suggested means to implement this approach, particularly on the categorization and funding amounts that would be appropriate.

### IV. Cumulative Effects of Regulation

The cumulative effects of regulation (CER) describe challenges that licensees or other impacted entities (such as State agency partners) may face while implementing new regulatory positions, programs, and requirements (e.g., rules, generic letters, backfits, inspections). The CER is an organizational challenge that results from a licensee or impacted entity implementing a number of complex positions, programs, or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC has implemented CER enhancements to the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comment on the cumulative effects that may result from this proposed rulemaking. In developing comments on the regulatory basis, consider the following questions:

1. In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements, including changes to programs, procedures, and the facility?

2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?

3. Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests inspection findings of a generic nature) influence the implementation of the potential proposed requirements?

4. Are there unintended consequences? Does the proposed action create conditions that would be contrary to the proposed action’s purpose and objectives? If so, what are the consequences, and how should they be addressed?

5. Please comment on the NRC’s cost and benefit estimate of the potential proposed action. This information will be used to support additional regulatory analysis by the NRC.

### V. Availability of Documents

The documents identified in the following table are available to interested persons as indicated.

Document	ADAMS accession No./Federal Register citation
PRM-30-66, "Request of the Organization of Agreement States for the NRC to Amend Appendix B, 'Quantities of Licensed Material Requiring Labeling,'" April 14, 2017.	ML17173A063.
<b>Federal Register</b> Notice Publishing PRM-30-66 for Public Comment, August 23, 2017 .....	82 FR 39971.
<b>Federal Register</b> Notice Extending the Public Comment Period, November 6, 2017 .....	82 FR 51363.
Comments on PRM-30-66, "Organization of Agreement States" .....	ML18038A879 (package).
SECY-19-0125, "Petition for Rulemaking and Rulemaking Plan on Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Material (PRM-30-66; NRC-2017-0159)," December 17, 2019.	ML18292A434 (package).
Staff Requirements Memorandum: SRM-SECY-19-0125, "Petition for Rulemaking and Rulemaking Plan on Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Material (PRM-30-66; NRC-2017-0159)," October 13, 2020.	ML20287A248 (package).
Letter to Matthew McKinley, Chair of the Organization of Agreement States (the Petitioner), November 4, 2020.	ML20303A141.
<b>Federal Register</b> Notice Publishing the Results of the NRC Evaluation of PRM-30-66, November 27, 2020.	85 FR 75959.
Public Meeting on Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Material, January 7, 2021.	ML21026A339 (package).
Regulatory Basis for Decommissioning Financial Assurance Requirements for Sealed and Unsealed Radioactive Materials, April 2022.	ML21235A480.

The NRC may post materials related to this document, including public comments, on the Federal rulemaking website at <https://www.regulations.gov> under Docket ID NRC-2017-0031. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC-2017-0031); (2) click the "Subscribe" link; and (3) enter an email address and click on the "Subscribe" link.

## VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated: April 25, 2022.

For the Nuclear Regulatory Commission.

**John R. Tappert,**

*Director, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 2022-09099 Filed 4-27-22; 8:45 am]

**BILLING CODE 7590-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2022-0456; Airspace Docket No. 21-ASO-34]

RIN 2120-AA66

#### Proposed Amendment of Area Navigation (RNAV) Route Q-75; Eastern United States

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Area Navigation (RNAV) route Q-75 to resolve similar sounding waypoint (WP) names and removes WPs and Fixes that are not required for defining the route structure. Q-75 supports the Northeast Corridor Atlantic Coast Route Project.

**DATES:** Comments must be received on or before June 13, 2022.

**ADDRESSES:** Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone: (800) 647-5527 or (202) 366-9826. You must identify FAA Docket No. FAA-2021-0456; Airspace Docket No. 21-ASO-34 at the beginning of your comments. You may also submit comments through the internet at <http://www.regulations.gov>.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [http://www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). For further information, you can contact the Airspace Policy Group, Federal Aviation

Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it expands the availability of RNAV routes in the National Airspace System, increases airspace capacity, and reduces complexity in high air traffic volume areas.

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0456; Airspace Docket No. 21–ASO–34) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <http://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2022–0456; Airspace Docket No. 21–ASO–34.” The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s web page at [https://www.faa.gov/air\\_traffic/publications/airspace\\_amendments/](https://www.faa.gov/air_traffic/publications/airspace_amendments/).

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

#### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, issued August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

#### The Proposal

This action proposes to amend 14 CFR part 71 by amending Q–75 in the eastern United States. Q–75 currently extends from the ENEME, GA, WP to the COPLY, MA, WP. This action would replace the name “DUEYS, NY, Fix” with the “FARLE, NY, Fix” for safety reasons. The current DUEYS fix is located just 2.45 nautical miles from the DEEZZ, NY, Fix (which is located adjacent to, but not on, Q–75). The similar sounding pronunciation of the two Fixes can lead to pilot/air traffic controller miscommunication. The latitude/longitude coordinates of the FARLE Fix would remain the same as used for the DUEYS Fix, therefore this change would not affect the current charted alignment of Q–75. In addition, the FAA proposes to remove a number of WPs and Fixes from the description of Q–75. Because they do not denote a route turn point, they are not required to be included in the Q–75 description. However, these points will continue to be depicted on the IFR En Route charts because they are used for air traffic control purposes. The affected WPs and Fixes are: TEUFL, GA, WP; BROSK, NC, WP; DRAIK, VA, Fix; TOOBN, MD, WP; SACRI, MD, Fix; STOEN, PA, Fix; COPES, PA, Fix; BIGGY, NJ, Fix; JERSY, NJ, Fix; GREKI, CT, Fix; and SWALO, MA, Fix.

The proposed full route description of Q–75 is listed in The Proposed Amendment section, below.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

#### Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an

established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

#### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021 and effective September 15, 2021, is amended as follows:

*Paragraph 2006 United States Area Navigation Routes.*

\* \* \* \* \*

#### Q–75 ENEME, GA to COPLY, MA [Amended]

ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
TEEEM, GA	WP	(Lat. 32°08′41.20″ N, long. 081°54′50.57″ W)
SHRIL, GA	WP	(Lat. 32°54′42.21″ N, long. 081°34′09.78″ W)
FISHO, SC	WP	(Lat. 33°16′46.25″ N, long. 081°24′43.52″ W)
ILBEE, SC	WP	(Lat. 34°18′41.66″ N, long. 081°01′07.88″ W)
SLOJO, SC	WP	(Lat. 34°38′46.31″ N, long. 080°39′25.63″ W)
Greensboro, NC (GSO)	VORTAC	(Lat. 36°02′44.49″ N, long. 079°58′34.95″ W)

Gordonsville, VA (GVE)	VORTAC	(Lat. 38°00'48.96" N, long. 078°09'10.90" W)
HAMMZ, VA	WP	(Lat. 38°43'51.56" N, long. 077°19'59.85" W)
MURPH, MD	Fix	(Lat. 39°27'51.22" N, long. 076°23'07.24" W)
Modena, PA (MXE)	VORTAC	(Lat. 39°55'05.00" N, long. 075°40'14.96" W)
Solberg, NJ (SBJ)	VOR/DME	(Lat. 40°34'58.95" N, long. 074°44'30.45" W)
FARLE, NY	WP	(Lat. 41°09'09.46" N, long. 073°47'48.52" W)
BIZEX, NY	WP	(Lat. 41°17'02.86" N, long. 073°34'50.20" W)
NELIE, CT	Fix	(Lat. 41°56'27.64" N, long. 072°41'18.88" W)
Boston, MA (BOS)	VOR/DME	(Lat. 42°21'26.82" N, long. 070°59'22.37" W)
COPLY, MA	WP	(Lat. 42°29'52.21" N, long. 070°33'28.57" W)

\* \* \* \* \*

Issued in Washington, DC, on April 21, 2022.

**Scott M. Rosenbloom,**

*Manager, Airspace Rules and Regulations.*

[FR Doc. 2022-08895 Filed 4-27-22; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[REG-106384-20]

RIN 1545-BQ14

#### Mortality Tables for Determining Present Value Under Defined Benefit Pension Plans

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document sets forth proposed regulations prescribing mortality tables to be used for most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors. The tables are used (together with other actuarial assumptions) to calculate the present value of a stream of expected future benefit payments for purposes of determining the minimum funding requirements for the plan. These mortality tables are also relevant for determining the minimum required amount of a lump-sum distribution from such a plan. These regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain defined benefit pension plans.

**DATES:** Written or electronic comments must be received by June 9, 2022. A public hearing on these proposed regulations has been scheduled for June 28, 2022 at 10 a.m. EST. Requests to speak and outlines of topics to be discussed at the public hearing must be received by June 9, 2022. If no outlines are received by June 9, 2022, the public hearing will be cancelled. Requests to attend the public hearing must be

received by 5 p.m. EST on June 24, 2022. The telephonic hearing will be made accessible to people with disabilities. Requests for special assistance during the telephonic hearing must be received by June 23, 2022.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-106384-20) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (the Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket. Send paper submissions to: CC:PA:LPD:PR (REG-106384-20), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

For those requesting to speak during the hearing, send an outline of topic submissions electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (indicate IRS and REG-106384-20).

Individuals who want to testify (by telephone) at the public hearing must send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-106384-20 and the word TESTIFY. For example, the subject line may say: Request to TESTIFY at Hearing for REG-106384-20. The email should include a copy of the speaker's public comments and outline of topics. Individuals who want to attend (by telephone) the public hearing must also send an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-106384-20 and the word

ATTEND. For example, the subject line may say: Request to ATTEND Hearing for REG-106384-20. To request special assistance during the telephonic hearing contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to [publichearings@irs.gov](mailto:publichearings@irs.gov) (preferred) or by telephone at (202) 317-5177 (not a toll-free number).

#### FOR FURTHER INFORMATION CONTACT:

Concerning the regulations, Arslan Malik or Linda Marshall at (202) 317-6700; concerning submission of comments and outlines of topics for the public hearing, call Regina Johnson at (202) 317-6901 (not toll-free numbers) or email [publichearings@irs.gov](mailto:publichearings@irs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 412 of the Internal Revenue Code (Code) prescribes minimum funding requirements for defined benefit pension plans, and section 430 specifies the minimum funding requirements that apply generally to defined benefit plans that are not multiemployer plans.<sup>1</sup> Section 430(a) defines the minimum required contribution by reference to the plan's funding target for the plan year. Under section 430(d)(1), a plan's funding target for a plan year generally is the present value of all benefits accrued or earned under the plan as of the first day of that plan year.

Section 430(h)(3) provides rules regarding the mortality tables to be used under section 430. Under section 430(h)(3)(A), except as provided in section 430(h)(3)(C) or (D), the Secretary is to prescribe by regulation mortality tables to be used in determining any

<sup>1</sup> Section 302 of the Employee Retirement Income Security Act of 1974, Public Law 93-406, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 of the Code, and section 303 of ERISA sets forth additional funding rules for defined benefit plans (other than multiemployer plans) that are parallel to those in section 430 of the Code. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code also apply for purposes of section 303 of ERISA.

present value or making any computation under section 430. Those mortality tables are to be based on the actual mortality experience of pension plan participants and projected trends in that experience. In prescribing those mortality tables, the Secretary is required to take into account results of available independent studies of mortality of individuals covered by pension plans. Under section 430(h)(3)(B), the Secretary is required to revise any mortality table in effect under section 430(h)(3)(A) at least every 10 years to reflect actual mortality experience of pension plan participants and projected trends in that experience. Under section 430(h)(3)(C), a plan sponsor is permitted to request the Secretary's approval to use plan-specific substitute mortality tables that meet requirements specified in the statute rather than the generally applicable mortality tables. If approved, these substitute mortality tables are used to determine present values and make computations under section 430 during the period of consecutive plan years (not to exceed 10) specified in the request.

Section 430(h)(3)(D) provides for the use of separate mortality tables with respect to certain individuals who are entitled to benefits on account of disability. These separate mortality tables are permitted to be used with respect to disabled individuals in lieu of the generally applicable mortality tables provided pursuant to section 430(h)(3)(A) or the substitute mortality tables under section 430(h)(3)(C). The Secretary is to establish separate tables for individuals with disabilities occurring in plan years beginning before January 1, 1995, and for individuals with disabilities occurring in later plan years, with the mortality tables for individuals with disabilities occurring in those later plan years applying only to individuals who are disabled within the meaning of Title II of the Social Security Act.

Section 417(e)(3) generally provides that the present value of certain benefits under a qualified pension plan (including single-sum distributions) must not be less than the present value of the accrued benefit using applicable interest rates and the applicable mortality table. Section 417(e)(3)(B) defines the term "applicable mortality table" as the mortality table specified for the plan year for minimum funding purposes under section 430(h)(3)(A) (without regard to the rules for substitute mortality tables under section 430(h)(3)(C) or mortality tables for disabled individuals under section 430(h)(3)(D)), modified as appropriate

by the Secretary. The modifications made by the Secretary to the section 430(h)(3)(A) mortality table to determine the section 417(e)(3)(B) applicable mortality table are not addressed in these proposed regulations. Revenue Ruling 2007-67, 2007-2 CB 1047, describes the modifications that are currently applied to determine the section 417(e)(3)(B) applicable mortality table.

Final regulations under section 430(h)(3) were published in the **Federal Register** on October 5, 2017 in TD 9826, 82 FR 46388 (the 2017 regulations). Section 1.430(h)(3)-1 prescribes base mortality tables and a set of mortality improvement rates, which may be reflected through the use of either generational mortality tables or static mortality tables. The generational mortality tables are a series of mortality tables, one for each year of birth, each of which fully reflects projected trends in mortality rates. The static mortality tables (which are updated annually<sup>2</sup>) use a single mortality table for all years of birth to approximate the present value that would be determined using the generational mortality tables.

The mortality tables included in the 2017 regulations are based on the mortality tables included in the RP-2014 Mortality Tables Report<sup>3</sup> (referred to in this preamble as the RP-2014 mortality tables), which was released by the Retirement Plan Experience Committee (RPEC) of the Society of Actuaries (SOA) in October 2014 (as revised in November 2014), and a set of mortality improvement rates (the Scale MP-2016 rates) as released by RPEC.<sup>4</sup> In 2016, RPEC initiated a study of private-sector retirement plans in the U.S. in order to provide an update to RP-2014, and in 2019, RPEC issued the Pri-2012 Private Retirement Plans Mortality Tables Report (Pri-2012 Report).<sup>5</sup>

In Notice 2019-67 (which provides mortality improvement rates and static mortality tables for 2021), the Treasury Department and the IRS asked for comments regarding future mortality tables under section 430(h)(3)(A). The notice identified the mortality tables in the Pri-2012 Report as a potential source

for developing updated mortality tables under section 430(h)(3)(A) and requested comments regarding (1) whether there are other studies of actual mortality experience of individuals covered by pension plans and projected trends in that experience that should be considered for use in developing updated mortality tables under section 430(h)(3)(A), such as studies that examine the mortality experience of individuals covered by large public-sector pension plans, and (2) if the mortality tables in the Pri-2012 Report were to be used to develop updated mortality tables under section 430(h)(3)(A), which of the tables in that report should be used. In October 2021, RPEC published the Mortality Improvement Scale MP-2021 Report (MP-2021 Report), which is the latest update to its study on mortality improvement.<sup>6</sup> In response to the request for comments in Notice 2019-67, the Treasury Department and the IRS received seven comments. The comments are discussed in the Explanation of Provisions.

The standards prescribed for developing the mortality tables under section 430(h)(3)(A) are the same as the standards that are prescribed for developing mortality tables for multiemployer plans under section 431(c)(6)(D)(iv)(II) (which are used to determine current liability in order to determine the minimum full funding limitation under section 431(c)(6)(B)). See § 1.431(c)(6)-1 (providing that the same mortality assumptions that apply for purposes of section 430(h)(3)(A) and § 1.430(h)(3)-1(a) are used to determine a multiemployer plan's current liability). These standards also apply for CSEC plans described in section 414(y) for purposes of developing mortality tables that are used for purposes of section 433(h)(3)(B)(i) (to determine current liability in order to determine the minimum full funding limitation under section 433(c)(2)(C) and the funded current liability percentage under section 433(i)). See § 1.433(h)(3)-1 (providing that the same mortality assumptions that apply for purposes of section 430(h)(3)(A) and § 1.430(h)(3)-1(a) are used to determine a CSEC plan's current liability).

### Explanation of Provisions

These proposed regulations set forth the methodology that the Treasury Department and the IRS intend to use to update the generally applicable mortality tables that are used to

<sup>2</sup> Static mortality tables were published in Notice 2017-60, 2017-43 IRB 365, Notice 2018-02, 2018-2 IRB 281, Notice 2019-26, 2019-15 IRB 943, Notice 2019-67, 2019-52 IRB 1510, and Notice 2020-85, 2020-51 IRB 1645.

<sup>3</sup> This report is available at <https://www.soa.org/globalassets/assets/files/research/exp-study/research-2014-rp-report.pdf>.

<sup>4</sup> This report is available at <https://www.soa.org/globalassets/assets/Files/Research/Exp-Study/mortality-improvement-scale-mp-2016.pdf>.

<sup>5</sup> This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2019/pri-2012-mortality-tables-report.pdf>.

<sup>6</sup> This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2021/2021-mp-scale-report.pdf>.

determine present value or make any computation under section 430. Pursuant to section 417(e)(3)(B), a modified version of these updated tables would be used for purposes of determining the amount of a single-sum distribution (or another accelerated form of distribution). In addition, these tables would be used to determine current liability for multiemployer plans under section 431(c)(6) and CSEC plans under section 433(h).

The methodology for developing updated tables under section 430(h)(3)(A) is being proposed pursuant to the requirement under section 430(h)(3)(B) to revise the mortality tables used under section 430 to reflect the actual mortality experience of pension plan participants and projected trends in that experience. As under the 2017 regulations, the methodology involves the separate determination of base mortality tables and the projection of mortality improvement.

#### A. Base Mortality Tables

The base mortality tables proposed for use under section 430(h)(3)(A) are derived from the tables set forth in the Pri-2012 Report. After reviewing the Pri-2012 Report and comments received in response to Notice 2019–67, the Treasury Department and the IRS have determined that the experience study used to develop the Pri-2012 Report is the best available study of the actual mortality experience of pension plan participants (other than disabled individuals). Accordingly, the mortality tables in the Pri-2012 Report are the foundation for the base mortality tables used to project the mortality of pension plan participants under these proposed regulations. Like the mortality tables provided in the 2017 regulations, the mortality tables set forth in these proposed regulations are gender-distinct and provide separate non-annuitant and annuitant mortality rates.

Unlike the Pri-2012 Report, these proposed regulations do not provide separate tables for annuitants who are retirees and annuitants who are contingent beneficiaries. In response to the request for comments in Notice 2019–67, most commenters recommended against the use of separate mortality tables for retirees and contingent beneficiaries because: (1) Those separate mortality tables are complex to apply on an exact basis; (2) applying those mortality tables would require actuaries to use historical data that may be difficult to obtain; and (3) the use of those separate mortality tables would not have a significant effect in measuring a plan's liabilities. After reviewing the comments, the Treasury

Department and the IRS concluded that the regulations should not provide separate mortality tables for annuitants who are retirees and annuitant who are contingent beneficiaries. Accordingly, these proposed regulations provide annuitant mortality tables that combine the mortality experience of retirees and contingent beneficiaries.

As under the 2017 regulations, these proposed regulations provide that the annuitant mortality tables are applied to determine the present value of benefits for an annuitant. For a non-annuitant, the non-annuitant mortality tables are applied for the periods before the participant is projected to commence receiving benefits, and the annuitant mortality tables are used for later periods. With respect to a beneficiary of a participant, the annuitant mortality tables apply for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality tables apply with respect to the beneficiary for the period beginning with each assumed commencement of benefits for the beneficiary.

These proposed regulations set forth base tables that are to be used to develop the mortality tables for future years. These base tables have a base year of 2012 (the central year of the experience study used to develop the mortality tables in the Pri-2012 Report). These base tables generally have the same mortality rates as the employee and non-disabled annuitant mortality rates that were released by RPEC in connection with the Pri-2012 Report. However, these base tables also include non-annuitant mortality rates for ages below age 18 and above age 80 and annuitant mortality rates for ages below age 50. This generally is the same approach that was used to develop the base mortality tables in the 2017 regulations.

The non-annuitant mortality rates for ages above age 80 were developed by (1) using the annuitant rates from the base mortality tables for ages 90 and older, and (2) interpolating between the rates for age 80 and age 90 in order to produce a smooth transition between the age 80 rates from the non-annuitant tables to the age 90 rates from the annuitant tables. The interpolation uses increasing fractions with a denominator of 55 to allocate the total difference between the rates at ages 80 and 90 over those 10 years. Thus, the rate at age 81 is set equal to the rate at age 80 plus 1/55 of the total difference, the age 82 rate is equal to the rate at age 81 plus 2/55 of the total difference (so that the age 82

rate is equal to the rate at age 80 plus 3/55 of the total difference), and so on for other ages.

A similar approach was used to develop annuitant rates for ages below age 50 for males and 52 for females. The annuitant rates for ages under age 50 for males and 52 for females were determined by (1) using the non-annuitant rates from the base mortality tables for ages 18 to 40, and (2) interpolating between the rates for age 40 and a later age, using the same methodology described in the preceding paragraph. The later age for males was 50 and for females was 52 (requiring that a denominator of 78 be substituted for 55 when that methodology was applied for females). This method produces a smooth transition between the age 40 rates from the non-annuitant tables and the age 50 rates for males, and age 52 rates for females, from the annuitant tables. In addition, some anomalous rates for female annuitants at ages 55 and 56 in the Pri-2012 Report were smoothed by using a straight linear interpolation between the age 54 rates and the age 57 rates from the female annuitant table. For ages below age 18, both the non-annuitant and annuitant rates incorporate the juvenile rates from the Pri-2012 Report.

#### B. Mortality Improvement

These proposed regulations use the Scale MP–2021 Rates (the mortality improvement scale in the MP–2021 Report) for valuation dates in the 2023 calendar year. This mortality improvement scale was developed using the same underlying methodology used to develop earlier mortality improvement scales but reflects historical population data through 2019 and the change to the RPEC-selected assumptions for the long-term rate of mortality improvement that was first incorporated in the Mortality Improvement Scale MP–2020 Report.<sup>7</sup> The Treasury Department and the IRS understand that RPEC expects to issue updated mortality improvement rates that reflect new data for mortality improvement trends for the general population on an annual basis. The Treasury Department and the IRS expect to take those updates into account in determining the mortality rates to be used under section 430(h)(3) for valuation dates in years after 2023. Those rates will be specified in guidance to be published in the Internal Revenue Bulletin. See § 601.601(d).

<sup>7</sup> This report is available at <https://www.soa.org/globalassets/assets/files/resources/experience-studies/2020/mortality-improvement-scale-mp-2020.pdf>.

### C. Use of Static Tables for Small Plans

The 2017 regulations provide for the use of separate generational non-annuitant and annuitant mortality tables and separate static non-annuitant and annuitant mortality tables. The preamble to those regulations explains that static mortality tables are permitted to be used (notwithstanding that generational mortality tables yield more accurate results) because of the limitations of some current actuarial software that is not designed to use generational tables. Since the issuance of the 2017 regulations, the software needed to use generational mortality tables has become widely used and is often used for other business needs such as financial accounting. There is no longer a need to allow the use of static mortality tables for most plans because most actuarial firms have the capability to use generational mortality tables. Requiring most employers to use generational mortality tables also minimizes anti-selection by plan sponsors who determine that the use of static mortality tables results in lower minimum funding requirements. Accordingly, these proposed regulations eliminate the use of separate static non-annuitant and annuitant mortality tables and require the use of generational mortality tables for plans that are not considered small plans.

These proposed regulations continue to allow the use of static mortality tables for small plans (defined as plans with 500 or fewer participants), as well as for multiemployer and CSEC plans. However, the static mortality tables that may be used for these plans are combined tables reflecting non-annuitant and annuitant mortality rates. These tables are constructed from a blend of non-annuitant and annuitant mortality rates based on the underlying data used in developing the Pri-2012 Report.

### Applicability Date

These regulations are proposed to apply to plan years beginning on or after January 1, 2023.

### Other Matters

#### A. Effect of Regulations on Previously Approved Substitute Mortality Tables

The 2017 regulations also included rules regarding the use of plan-specific mortality tables under section 430(h)(3)(C), which are set forth in § 1.430(h)(3)-2.<sup>8</sup> Section 1.430(h)(3)-

2(c)(6)(ii) provides for the early termination of the use of substitute mortality tables in certain circumstances, including pursuant to a replacement of the mortality tables specified in § 1.430(h)(3)-1. Under § 1.430(h)(3)-2(c)(6)(ii)(E), the early termination pursuant to such a replacement must be effective as of a date specified in guidance published in the Internal Revenue Bulletin. Except as described in the next paragraph, the Treasury Department and the IRS do not intend to require the early termination of previously approved substitute mortality tables in connection with the proposed replacement of the generally applicable mortality tables.

Under § 1.430(h)(3)-2(c)(6)(ii)(C), the use of substitute mortality tables is terminated early if there is a significant change in the individuals covered by the plan. As defined in § 1.430(h)(3)-2(c)(6)(iii)(A), a significant change is either an increase or decrease in the number of individuals covered by the substitute mortality table for the plan year of more than 20 percent of the average number of individuals in that population over the years covered by the experience study on which the substitute mortality tables are based. However, under § 1.430(h)(3)-2(c)(6)(iii)(A), a change in coverage is not treated as significant if the plan's actuary certifies in writing to the satisfaction of the Commissioner that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population (taking into account the effect of the change in the population).

When final regulations providing for the replacement of mortality tables under section 430 are issued, the Treasury Department and the IRS anticipate issuing guidance in the Internal Revenue Bulletin pursuant to § 1.430(h)(3)-2(c)(6)(ii)(E) that will require the early termination of a plan's previously approved substitute mortality table only if the plan has experienced a significant change in coverage under § 1.430(h)(3)-2(c)(6)(iii). The early termination would apply without regard to any plan actuary certification that the substitute mortality tables used for the plan population continue to be accurately predictive of future mortality of that population.

#### B. Impact of COVID-19 on Mortality Rates

The mortality improvement rates in these proposed regulations are based on the MP-2021 Report, which was prepared in 2021 based on the most recent data available at that time

(estimated 2019 calendar year data). Accordingly, the MP-2021 mortality improvement scale does not take into account any mortality experience in calendar years 2020 and 2021, which are the first years affected by the COVID-19 pandemic. In selecting their assumed long-term improvement rates, RPEC did not make any adjustments to take into account any effects of COVID-19 on mortality rates in the long term because there was no consensus on COVID-19's effect on expected future mortality experience.<sup>9</sup> Accordingly, the mortality improvement rates in these regulations do not take into account the impact of the COVID-19 pandemic.

The MP-2021 Report includes a review of actual mortality data from 2020 and a portion of 2021. For the 40-week period starting March 22, 2020, the review indicated that the number of deaths was approximately 120 percent of the expected number. For 2021, that ratio dropped to 110 percent in the spring, before increasing in the summer. The number of deaths attributable to the COVID-19 pandemic has remained high during the early part of 2022. These higher mortality rates do not indicate that the MP-2021 mortality improvement scale is flawed, but merely reflect that the model did not anticipate COVID-19 in projecting the mortality rates for these years.

The mortality rates provided in these proposed regulations would apply starting in 2023. If the impact of COVID-19 on mortality experience is viewed as only a short-term phenomenon, the mere fact that the model in the MP-2021 Report (upon which these proposed regulations are based) did not reflect the actual mortality experience for 2020 through 2022 does not mean that the mortality rates in these proposed regulations are inappropriate because it is not clear to what extent the increased mortality associated with COVID-19 will continue for 2023 and later years. However, to the extent there is a long-term higher mortality rate from COVID-19, the Treasury Department and the IRS expect that RPEC will reflect the long-term impact of COVID-19 in future mortality improvement scales, which could be specified for use in future guidance. The Treasury Department and the IRS request comments about how the data for periods in which mortality experience for plan participants has been significantly affected by the COVID-19 pandemic should be taken

<sup>8</sup> Rev. Proc. 2017-55, 2017-43 IRB 373, sets forth the procedure by which a plan sponsor of a defined benefit plan may request and obtain approval for the use of plan-specific substitute mortality tables in accordance with section 430(h)(3)(C).

<sup>9</sup> RPEC cited uncertainty relating to the effectiveness of vaccines and treatments, severity of future variants, and the long-term effect of having recovered from COVID-19 on an employee's health.

into account in future mortality improvement rates under these regulations and future base mortality tables.

These proposed regulations do not change any of the rules or procedures required for employers to request substitute mortality tables. The Treasury Department and the IRS request comments about whether the rules and procedures relating to development of substitute mortality tables should be modified to recognize the potential that the mortality experience for the period of the COVID-19 pandemic is not accurately predictive of the future mortality experience for participants of a plan for which substitute mortality tables are requested.

### Incorporation by Reference

Section 1.430(h)(3)–1(b)(1)(iii) of the proposed regulations provides that the mortality improvement rates used to construct generational tables to be used for valuation dates occurring during 2023 are the Scale MP–2021 Rates, which are included in the Mortality Improvement Scale MP–2021 Report. The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. These regulations require that agencies must discuss in the preamble to a rule or proposed rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested parties can obtain the materials. 1 CFR 51.5(b).

The Scale MP–2021 Rates and the Mortality Improvement Scale MP–2021 Report are described in this preamble under the heading “B. Mortality Improvement” in the Explanation of Provisions section of this preamble. The Mortality Improvement Scale MP–2021 Report was issued by the Retirement Plans Experience Committee of the Society of Actuaries on October 27, 2021, and is available at <https://www.soa.org/resources/experience-studies/2021/mortality-improvement-scale-mp-2021>.

### Statement of Availability of IRS Documents

IRS Revenue Rulings, Revenue Procedures, and Notices cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by visiting the IRS website at [www.irs.gov](http://www.irs.gov).

### Special Analyses

These regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that the regulations will not have a significant economic impact on a substantial number of small entities. The only provision that increases regulatory burden is § 1.430(h)(3)–1(b), which generally requires the use of generational mortality tables. However, under § 1.430(h)(3)–1(c), small entities are not required to use generational mortality tables. Therefore, the proposed rule would not have a significant economic impact on a substantial number of small entities.

Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

### Comments and Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of these proposed regulations.

A public hearing is being held by teleconference on June 28, 2022, beginning at 10 a.m. EST. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments by telephone at the hearing must submit electronic or written comments and an outline of the topics to be addressed and the time to be devoted to each topic by June 9, 2022, as prescribed in the preamble under the **ADDRESSES** section.

A period of 10 minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available at [www.regulations.gov](http://www.regulations.gov), search IRS and REG–106384–20. Copies of the agenda will also be available by emailing a request to [publichearings@irs.gov](mailto:publichearings@irs.gov). Please put “REG–106384–20 Agenda Request” in the subject line of the email.

### Drafting Information

The principal authors of these regulations are Arslan Malik and Linda S.F. Marshall of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these regulations.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

### PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 1.430(h)(3)–1 is revised to read as follows:

#### **§ 1.430 (h)(3)–1 Mortality tables used to determine present value.**

(a) *Overview*—(1) *Standard mortality tables.* This section sets forth rules for the mortality tables to be used in determining present value or making any computation under section 430. These mortality tables include—

(i) Generational mortality tables described in paragraph (b) of this section; and

(ii) Static mortality tables for small plans described in paragraph (c) of this section.

(2) *Alternative tables*—(i) *Plan-specific mortality tables.* In lieu of using the mortality tables provided under this section, plan-specific substitute mortality tables are permitted to be used for purposes of section 430 pursuant to section 430(h)(3)(C), provided that the requirements of § 1.430(h)(3)–2 are satisfied.

(ii) *Disabled individuals.* In lieu of using the mortality tables provided under this section, mortality tables for disabled individuals are permitted to be used pursuant to section 430(h)(3)(D). These tables are provided in guidance published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(b) *Generational mortality tables*—(1) *In general*—(i) *Construction of generational mortality tables.* The generational mortality tables that are permitted to be used under section 430(h)(3)(A) and paragraph (a)(1)(i) of this section are constructed from the base mortality tables described in

paragraph (b)(1)(ii) of this section and the mortality improvement rates described in paragraph (b)(1)(iii) of this section.

(ii) *Base mortality tables.* The base mortality tables are set forth in paragraph (d) of this section. The base year for those tables is 2012.

(iii) *Mortality improvement rates.* The mortality improvement rates for valuation dates occurring during 2023 are the Scale MP–2021 Rates.

**Note 1 to paragraph (b)(1)(iii):** For later years, updated mortality improvement rates that take into account new data for mortality improvement trends of the general population will also be incorporated by reference.

(iv) *Incorporation by reference.* The material listed in this paragraph (b)(1)(iv) is incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. This material is available for inspection at the IRS and at the National Archives and Records Administration (NARA). Contact IRS at: Qualified Plans Branch 1, CC:EEE:QP1, 1111 Constitution Avenue NW, Washington, DC 20224; (202) 317–6700; [www.irs.gov/retirement-plans/interest-rates-tables](http://www.irs.gov/retirement-plans/interest-rates-tables). For information on the availability of this material at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov), or go to: [www.archives.gov/federal-register/cfr/ibr-locations.html](http://www.archives.gov/federal-register/cfr/ibr-locations.html).

The material is available from the Society of Actuaries at: Society of Actuaries, 475 N. Martingale Rd., Suite 600, Schaumburg, IL 60173; (847) 706–3500; <https://www.soa.org/resources/experience-studies/2021/mortality-improvement-scale-mp-2021/>.

(A) The Scale MP–2021 Rates.

(B) [Reserved]

(2) *Application of mortality improvement rates—(i) In general.* Under the generational mortality tables described in this paragraph (b), the probability of an individual's death at a particular age in the future is determined as the individual's base mortality rate that applies at that age (that is, the applicable mortality rate from the tables set forth in paragraph (d) of this section for that age, gender, and status as an annuitant or a non-annuitant) multiplied by the cumulative mortality improvement factor for the individual's gender and for that age for the period from 2012 through the calendar year in which the individual is projected to reach the particular age. Paragraph (b)(3) of this section shows how the base mortality tables in paragraph (d) of this section and the mortality improvement rates for valuation dates occurring during 2023 are combined to determine projected mortality rates.

(ii) *Cumulative mortality improvement factor.* The cumulative

mortality improvement factor for an age and gender for a period is the product of the annual mortality improvement factors for that age and gender for each year within that period.

(iii) *Annual mortality improvement factor.* The annual mortality improvement factor for an age and gender for a year is 1 minus the mortality improvement rate that applies for that age and gender for that year. If that annual mortality improvement rate is greater than 1 (corresponding to a negative mortality improvement rate), then the projected mortality rate for that age and gender for that year is greater than the projected mortality rate for the same age and gender for the preceding year.

(3) *Example of calculation—(i) Calculation of mortality rate.* The mortality rate for 2023 that is applied to male annuitants who are age 67 in 2023 is equal to the product of the mortality rate for 2012 that applied to male annuitants who were age 67 in 2012 (0.01288) and the cumulative mortality improvement factor for age 67 males from 2012 to 2023. The cumulative mortality improvement factor for age 67 males for the period from 2012 to 2023 is 0.9919, and the mortality rate for 2023 for male annuitants who are age 67 in that year would be 0.01278, as shown in the following table.

TABLE 1 TO PARAGRAPH (b)(3)(i)

Calendar year	Mortality improvement rate	Annual mortality improvement factor (1-mortality improvement rate)	Cumulative mortality improvement factor	Mortality rate
2012 .....	n/a	n/a	n/a	0.01288
2013 .....	0.0052	0.9948	0.9948	.....
2014 .....	0.0027	0.9973	0.9921	.....
2015 .....	0.0009	0.9991	0.9912	.....
2016 .....	(0.0003)	1.0003	0.9915	.....
2017 .....	(0.0010)	1.0010	0.9925	.....
2018 .....	(0.0016)	1.0016	0.9941	.....
2019 .....	(0.0016)	1.0016	0.9957	.....
2020 .....	(0.0010)	1.0010	0.9967	.....
2021 .....	0.0000	1.0000	0.9967	.....
2022 .....	0.0015	0.9985	0.9952	.....
2023 .....	0.0033	0.9967	0.9919	0.01278

(ii) *Probability of survival for an individual.* After the projected mortality rates are derived for each age for each year, the rates are used to calculate the present value of a benefit stream that depends on the probability of survival year-by-year. For example, for purposes of calculating the present value (for a 2023 valuation date) of future payments in a benefit stream payable for a male

annuitant who is age 67 in 2023, the probability of survival for the annuitant is based on the mortality rate for a male annuitant who is age 67 in 2023 (0.01278), and the projected mortality rate for a male annuitant who will be age 68 in 2024 (0.01378), age 69 in 2025 (0.01489), and so on.

(4) *Use of the tables—(i) Separate tables for annuitants and non-*

*annuitants.* Separate mortality tables are provided for use for annuitants and non-annuitants. The non-annuitant mortality tables are applied to determine the probability of survival for a non-annuitant for the period before the non-annuitant is projected to commence receiving benefits. The annuitant mortality tables are applied to determine the present value of benefits

for each annuitant. In addition, the annuitant mortality tables are applied for each non-annuitant with respect to each assumed commencement of benefits for the period beginning with that assumed commencement. For purposes of this section, an annuitant means a plan participant who has commenced receiving benefits and a non-annuitant means a plan participant who has not yet commenced receiving benefits (for example, an active employee or a terminated vested participant). A participant whose benefit has partially commenced is treated as an annuitant with respect to the portion of the benefit that has commenced and treated as a non-annuitant with respect to the balance of the benefit. In addition, with respect to a beneficiary of a participant, the annuitant mortality tables apply for the period beginning with each assumed commencement of benefits for the participant. If the participant has died (or to the extent the participant is assumed to die before commencing benefits), the annuitant mortality tables apply with respect to the beneficiary for the period beginning with each assumed commencement of benefits for the beneficiary.

(ii) *Examples of calculation using separate non-annuitant and annuitant tables.* With respect to a 45-year-old active participant who is projected to commence receiving an annuity at age 55, the funding target is determined using the non-annuitant mortality tables for the period before the participant attains age 55 and using the annuitant mortality tables for the period ages 55 and above. Similarly, for a 45-year-old terminated vested participant who is projected to commence an annuity at age 65, the funding target is determined using the non-annuitant mortality tables for the period before the participant attains age 65 and using the annuitant mortality tables for ages 65 and above.

(c) *Static mortality tables—(1) Availability of alternative tables for small plans—(i) In general.* As an alternative to the generational mortality tables defined in paragraph (b) of this section, static mortality tables may be used for a small plan. The static mortality tables described in this paragraph (c) are constructed from the separate non-annuitant and annuitant static mortality tables described in paragraph (c)(2)(i) of this section, combined using the procedure

described in paragraph (c)(2)(ii) of this section.

(ii) *Definition of small plan.* For purposes of this paragraph (c), a small plan is defined as a plan with 500 or fewer total participants (including both active and inactive participants and beneficiaries of deceased participants) on the valuation date.

(iii) *Use of static mortality tables.* The static mortality tables that are used for a valuation date are the static mortality tables for the calendar year that includes the valuation date.

(iv) *Publication of mortality tables.* The static mortality tables for the 2023 calendar year are set forth in paragraph (e) of this section.

**Note 2 to paragraph (c)(1)(iv):** The static mortality tables for valuation dates for later calendar years will be published in the Internal Revenue Bulletin. See § 601.601(d) of this chapter.

(2) *Development of static mortality tables—(i) Non-annuitant and annuitant mortality tables.* The non-annuitant and annuitant static mortality tables are determined using the base mortality tables described in paragraph (b)(1)(ii) of this section. The rates in those base mortality tables are adjusted using the mortality improvement rates described in paragraph (b)(1)(iii) of this section, in accordance with the rules set forth in paragraph (c)(3) of this section.

(ii) *Combined static mortality tables.* The static mortality tables described in this paragraph (c) are constructed from the separate non-annuitant and annuitant static mortality tables pursuant to paragraph (c)(2)(i) of this section, blended using the weighting factors in paragraph (d) of this section. The weighting factors are applied to develop these combined static tables using the following equation: Combined mortality rate = [non-annuitant rate \* (1 – weighting factor)] + [annuitant rate \* weighting factor].

(3) *Projection of mortality improvements—(i) General rule.* Except as provided in paragraph (c)(3)(iii) of this section, the static mortality tables for a calendar year are determined by multiplying the applicable mortality rate for each age from the base mortality tables by both—

(A) The cumulative mortality improvement factor (determined under paragraph (b)(2)(ii) of this section) for the period from 2012 through that calendar year; and

(B) The cumulative mortality improvement factor (determined under

paragraph (b)(2)(ii) of this section) for the period beginning in that calendar year and continuing beyond that calendar year for the number of years in the projection period described in paragraph (c)(3)(ii) of this section.

(ii) *Projection period for static mortality tables—(A) In general.* The projection period is 8 years for males and 9 years for females, as adjusted based on age as provided in paragraph (c)(3)(ii)(B) of this section.

(B) *Age adjustment.* For ages below 80, the projection period is increased by 1 year for each year below age 80. For ages above 80, the projection period is reduced (but not below zero) by  $\frac{1}{3}$  year for each year above 80.

(iii) *Fractional projection periods.* If for an age the number of years in the projection period determined under paragraph (c)(3)(ii) of this section is not a whole number, then the mortality rate for that age is determined by using linear interpolation between—

(A) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next lower whole number; and

(B) The mortality rate for that age that would be determined under paragraph (c)(3)(i) of this section if the number of years in the projection period were the next higher whole number.

(iv) *Example.* For example, at age 85 the projection period for a male is  $6\frac{1}{3}$  years (8 years minus  $\frac{1}{3}$  year for each of the 5 years above age 80). For a valuation date in 2023, the mortality rate in the static mortality table for an 85-year-old male is based on a projection of mortality improvement for  $6\frac{1}{3}$  years beyond 2023. Under paragraph (c)(3)(iii) of this section, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2023 is  $\frac{2}{3}$  times the projected mortality rate for a male annuitant that age in 2029 plus  $\frac{1}{3}$  times the projected mortality rate for a male annuitant that age in 2030. Accordingly, the mortality rate for an 85-year-old male annuitant in the static mortality table for 2023 is  $0.07967$  ( $\frac{2}{3}$  times the projected mortality rate for an 85-year-old male annuitant in 2029 ( $0.07986$ ) plus  $\frac{1}{3}$  times the projected mortality rate for an 85-year-old male annuitant in 2030 ( $0.07928$ )).

(d) *Base mortality tables.* The following are the base mortality tables. The base year for these tables is 2012.

TABLE 2 TO PARAGRAPH (d)

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plans	Non-annuitant	Annuitant	Weighting factor for small plans
0 .....	0.00650	0.00650	0.0000	0.00544	0.00544	0.0000
1 .....	0.00045	0.00045	0.0000	0.00038	0.00038	0.0000
2 .....	0.00030	0.00030	0.0000	0.00023	0.00023	0.0000
3 .....	0.00022	0.00022	0.0000	0.00018	0.00018	0.0000
4 .....	0.00019	0.00019	0.0000	0.00013	0.00013	0.0000
5 .....	0.00016	0.00016	0.0000	0.00012	0.00012	0.0000
6 .....	0.00014	0.00014	0.0000	0.00011	0.00011	0.0000
7 .....	0.00013	0.00013	0.0000	0.00010	0.00010	0.0000
8 .....	0.00011	0.00011	0.0000	0.00009	0.00009	0.0000
9 .....	0.00009	0.00009	0.0000	0.00009	0.00009	0.0000
10 .....	0.00008	0.00008	0.0000	0.00009	0.00009	0.0000
11 .....	0.00009	0.00009	0.0000	0.00009	0.00009	0.0000
12 .....	0.00013	0.00013	0.0000	0.00010	0.00010	0.0000
13 .....	0.00017	0.00017	0.0000	0.00012	0.00012	0.0000
14 .....	0.00022	0.00022	0.0000	0.00013	0.00013	0.0000
15 .....	0.00028	0.00028	0.0000	0.00013	0.00013	0.0000
16 .....	0.00034	0.00034	0.0000	0.00014	0.00014	0.0000
17 .....	0.00040	0.00040	0.0000	0.00015	0.00015	0.0000
18 .....	0.00046	0.00046	0.0000	0.00015	0.00015	0.0000
19 .....	0.00053	0.00053	0.0000	0.00015	0.00015	0.0000
20 .....	0.00056	0.00056	0.0000	0.00015	0.00015	0.0000
21 .....	0.00056	0.00056	0.0000	0.00015	0.00015	0.0000
22 .....	0.00056	0.00056	0.0000	0.00016	0.00016	0.0000
23 .....	0.00055	0.00055	0.0000	0.00018	0.00018	0.0000
24 .....	0.00055	0.00055	0.0000	0.00019	0.00019	0.0000
25 .....	0.00054	0.00054	0.0000	0.00019	0.00019	0.0000
26 .....	0.00054	0.00054	0.0000	0.00019	0.00019	0.0000
27 .....	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
28 .....	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
29 .....	0.00054	0.00054	0.0000	0.00020	0.00020	0.0000
30 .....	0.00055	0.00055	0.0000	0.00021	0.00021	0.0000
31 .....	0.00055	0.00055	0.0000	0.00022	0.00022	0.0000
32 .....	0.00056	0.00056	0.0000	0.00023	0.00023	0.0000
33 .....	0.00058	0.00058	0.0000	0.00025	0.00025	0.0000
34 .....	0.00059	0.00059	0.0000	0.00026	0.00026	0.0000
35 .....	0.00061	0.00061	0.0000	0.00028	0.00028	0.0000
36 .....	0.00063	0.00063	0.0000	0.00031	0.00031	0.0000
37 .....	0.00065	0.00065	0.0000	0.00034	0.00034	0.0000
38 .....	0.00068	0.00068	0.0000	0.00036	0.00036	0.0000
39 .....	0.00071	0.00071	0.0000	0.00040	0.00040	0.0000
40 .....	0.00074	0.00074	0.0000	0.00043	0.00043	0.0000
41 .....	0.00077	0.00082	0.0008	0.00047	0.00049	0.0010
42 .....	0.00081	0.00099	0.0016	0.00051	0.00061	0.0020
43 .....	0.00086	0.00124	0.0024	0.00055	0.00078	0.0030
44 .....	0.00091	0.00158	0.0032	0.00060	0.00101	0.0040
45 .....	0.00097	0.00200	0.0040	0.00065	0.00130	0.0051
46 .....	0.00105	0.00251	0.0047	0.00071	0.00165	0.0061
47 .....	0.00113	0.00310	0.0055	0.00077	0.00206	0.0071
48 .....	0.00123	0.00378	0.0063	0.00083	0.00252	0.0081
49 .....	0.00134	0.00454	0.0071	0.00090	0.00304	0.0091
50 .....	0.00147	0.00539	0.0079	0.00098	0.00362	0.0101
51 .....	0.00161	0.00544	0.0140	0.00107	0.00426	0.0185
52 .....	0.00177	0.00565	0.0209	0.00116	0.00495	0.0262
53 .....	0.00194	0.00588	0.0302	0.00126	0.00500	0.0349
54 .....	0.00213	0.00616	0.0430	0.00137	0.00512	0.0449
55 .....	0.00234	0.00647	0.0898	0.00148	0.00517	0.0853
56 .....	0.00257	0.00686	0.1676	0.00161	0.00522	0.1535
57 .....	0.00281	0.00728	0.2153	0.00175	0.00528	0.1923
58 .....	0.00308	0.00770	0.2635	0.00190	0.00561	0.2291
59 .....	0.00338	0.00811	0.3144	0.00206	0.00601	0.2680
60 .....	0.00369	0.00848	0.3821	0.00224	0.00643	0.3192
61 .....	0.00403	0.00882	0.4579	0.00243	0.00690	0.3731
62 .....	0.00441	0.00918	0.5935	0.00264	0.00743	0.4705
63 .....	0.00481	0.00960	0.7153	0.00287	0.00796	0.5668
64 .....	0.00525	0.01014	0.7764	0.00312	0.00859	0.6230
65 .....	0.00573	0.01087	0.8454	0.00339	0.00928	0.7172
66 .....	0.00636	0.01178	0.9002	0.00380	0.01003	0.8006
67 .....	0.00706	0.01288	0.9275	0.00427	0.01089	0.8414

TABLE 2 TO PARAGRAPH (d)—Continued

Age	Males			Females		
	Non-annuitant	Annuitant	Weighting factor for small plans	Non-annuitant	Annuitant	Weighting factor for small plans
68 .....	0.00784	0.01418	0.9431	0.00480	0.01192	0.8658
69 .....	0.00870	0.01564	0.9547	0.00540	0.01309	0.8857
70 .....	0.00967	0.01729	0.9642	0.00606	0.01444	0.9046
71 .....	0.01073	0.01914	0.9732	0.00681	0.01597	0.9240
72 .....	0.01192	0.02121	0.9791	0.00765	0.01770	0.9365
73 .....	0.01323	0.02354	0.9823	0.00860	0.01967	0.9437
74 .....	0.01469	0.02613	0.9847	0.00966	0.02192	0.9512
75 .....	0.01632	0.02905	0.9868	0.01085	0.02445	0.9568
76 .....	0.01812	0.03233	0.9889	0.01219	0.02727	0.9637
77 .....	0.02012	0.03604	0.9906	0.01370	0.03042	0.9682
78 .....	0.02234	0.04026	0.9920	0.01539	0.03391	0.9727
79 .....	0.02480	0.04504	0.9935	0.01729	0.03775	0.9765
80 .....	0.02754	0.05046	1.0000	0.01943	0.04198	1.0000
81 .....	0.02989	0.05657	1.0000	0.02134	0.04663	1.0000
82 .....	0.03460	0.06343	1.0000	0.02516	0.05178	1.0000
83 .....	0.04166	0.07114	1.0000	0.03089	0.05754	1.0000
84 .....	0.05108	0.07977	1.0000	0.03853	0.06401	1.0000
85 .....	0.06285	0.08946	1.0000	0.04808	0.07132	1.0000
86 .....	0.07698	0.10032	1.0000	0.05955	0.07954	1.0000
87 .....	0.09346	0.11248	1.0000	0.07293	0.08879	1.0000
88 .....	0.11229	0.12600	1.0000	0.08822	0.09936	1.0000
89 .....	0.13348	0.14088	1.0000	0.10542	0.11124	1.0000
90 .....	0.15703	0.15703	1.0000	0.12453	0.12453	1.0000
91 .....	0.17401	0.17401	1.0000	0.13818	0.13818	1.0000
92 .....	0.19151	0.19151	1.0000	0.15250	0.15250	1.0000
93 .....	0.20936	0.20936	1.0000	0.16737	0.16737	1.0000
94 .....	0.22742	0.22742	1.0000	0.18274	0.18274	1.0000
95 .....	0.24569	0.24569	1.0000	0.19863	0.19863	1.0000
96 .....	0.26415	0.26415	1.0000	0.21509	0.21509	1.0000
97 .....	0.28281	0.28281	1.0000	0.23214	0.23214	1.0000
98 .....	0.30169	0.30169	1.0000	0.24983	0.24983	1.0000
99 .....	0.32077	0.32077	1.0000	0.26814	0.26814	1.0000
100 .....	0.33996	0.33996	1.0000	0.28698	0.28698	1.0000
101 .....	0.35910	0.35910	1.0000	0.30619	0.30619	1.0000
102 .....	0.37794	0.37794	1.0000	0.32549	0.32549	1.0000
103 .....	0.39633	0.39633	1.0000	0.34472	0.34472	1.0000
104 .....	0.41415	0.41415	1.0000	0.36375	0.36375	1.0000
105 .....	0.43131	0.43131	1.0000	0.38243	0.38243	1.0000
106 .....	0.44771	0.44771	1.0000	0.40065	0.40065	1.0000
107 .....	0.46329	0.46329	1.0000	0.41828	0.41828	1.0000
108 .....	0.47800	0.47800	1.0000	0.43522	0.43522	1.0000
109 .....	0.49181	0.49181	1.0000	0.45139	0.45139	1.0000
110 .....	0.50000	0.50000	1.0000	0.46673	0.46673	1.0000
111 .....	0.50000	0.50000	1.0000	0.48120	0.48120	1.0000
112 .....	0.50000	0.50000	1.0000	0.49477	0.49477	1.0000
113 .....	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
114 .....	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
115 .....	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
116 .....	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
117 .....	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
118 .....	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
119 .....	0.50000	0.50000	1.0000	0.50000	0.50000	1.0000
120 .....	1.00000	1.00000	1.0000	1.00000	1.00000	1.0000

(e) *Static tables for 2023.* The following static mortality tables are used pursuant to paragraph (a)(1)(ii) of this section for determining present value or making any computation under section 430 with respect to valuation dates occurring during 2023.

TABLE 3 TO PARAGRAPH (e)

Age	Male	Female
0 .....	0.00226	0.00194
1 .....	0.00016	0.00014
2 .....	0.00011	0.00008
3 .....	0.00008	0.00007
4 .....	0.00007	0.00005
5 .....	0.00006	0.00005
6 .....	0.00005	0.00004
7 .....	0.00005	0.00004

TABLE 3 TO PARAGRAPH (e)—Continued

Age	Male	Female
8 .....	0.00004	0.00004
9 .....	0.00004	0.00004
10 .....	0.00003	0.00004
11 .....	0.00004	0.00004
12 .....	0.00005	0.00004
13 .....	0.00007	0.00005
14 .....	0.00009	0.00006

TABLE 3 TO PARAGRAPH (e)—  
Continued

Age	Male	Female
15 .....	0.00012	0.00006
16 .....	0.00015	0.00006
17 .....	0.00017	0.00007
18 .....	0.00020	0.00007
19 .....	0.00024	0.00007
20 .....	0.00026	0.00007
21 .....	0.00026	0.00007
22 .....	0.00027	0.00008
23 .....	0.00027	0.00009
24 .....	0.00028	0.00010
25 .....	0.00029	0.00010
26 .....	0.00030	0.00011
27 .....	0.00032	0.00012
28 .....	0.00033	0.00012
29 .....	0.00035	0.00013
30 .....	0.00037	0.00014
31 .....	0.00038	0.00015
32 .....	0.00040	0.00016
33 .....	0.00043	0.00018
34 .....	0.00045	0.00018
35 .....	0.00048	0.00020
36 .....	0.00051	0.00022
37 .....	0.00053	0.00024
38 .....	0.00055	0.00026
39 .....	0.00058	0.00028
40 .....	0.00059	0.00029
41 .....	0.00061	0.00031
42 .....	0.00063	0.00033
43 .....	0.00065	0.00035
44 .....	0.00067	0.00037
45 .....	0.00069	0.00039
46 .....	0.00073	0.00042
47 .....	0.00078	0.00046
48 .....	0.00083	0.00049
49 .....	0.00088	0.00053
50 .....	0.00097	0.00059
51 .....	0.00106	0.00065
52 .....	0.00118	0.00074
53 .....	0.00132	0.00084
54 .....	0.00148	0.00094
55 .....	0.00176	0.00113
56 .....	0.00217	0.00140
57 .....	0.00254	0.00161
58 .....	0.00296	0.00188
59 .....	0.00342	0.00218
60 .....	0.00396	0.00254
61 .....	0.00456	0.00294
62 .....	0.00539	0.00354
63 .....	0.00623	0.00418
64 .....	0.00693	0.00476
65 .....	0.00779	0.00555
66 .....	0.00874	0.00640
67 .....	0.00972	0.00717
68 .....	0.01081	0.00798
69 .....	0.01201	0.00893
70 .....	0.01337	0.01002
71 .....	0.01490	0.01130
72 .....	0.01663	0.01276
73 .....	0.01858	0.01442
74 .....	0.02081	0.01636
75 .....	0.02336	0.01858
76 .....	0.02629	0.02115
77 .....	0.02966	0.02406
78 .....	0.03353	0.02736
79 .....	0.03796	0.03106
80 .....	0.04313	0.03557
81 .....	0.04868	0.04000
82 .....	0.05503	0.04498
83 .....	0.06223	0.05058
84 .....	0.07040	0.05694
85 .....	0.07967	0.06416

TABLE 3 TO PARAGRAPH (e)—  
Continued

Age	Male	Female
86 .....	0.09014	0.07229
87 .....	0.10191	0.08147
88 .....	0.11507	0.09197
89 .....	0.12960	0.10372
90 .....	0.14540	0.11681
91 .....	0.16201	0.13032
92 .....	0.17900	0.14437
93 .....	0.19623	0.15892
94 .....	0.21351	0.17370
95 .....	0.23063	0.18881
96 .....	0.24879	0.20508
97 .....	0.26725	0.22194
98 .....	0.28591	0.23947
99 .....	0.30502	0.25760
100 .....	0.32431	0.27640
101 .....	0.34372	0.29564
102 .....	0.36307	0.31511
103 .....	0.38223	0.33471
104 .....	0.40097	0.35426
105 .....	0.41863	0.37356
106 .....	0.43581	0.39243
107 .....	0.45234	0.41085
108 .....	0.46796	0.42844
109 .....	0.48288	0.44529
110 .....	0.49240	0.46134
111 .....	0.49374	0.47665
112 .....	0.49507	0.49112
113 .....	0.49651	0.49746
114 .....	0.49795	0.49840
115 .....	0.49930	0.49950
116 .....	0.49960	0.49975
117 .....	0.49980	0.49985
118 .....	0.49995	0.50000
119 .....	0.50000	0.50000
120 .....	1.00000	1.00000

(f) *Applicability date.* This section applies for plan years beginning on or after January 1, 2023.

■ **Par. 3.** Section 1.431(c)(6)–1 is revised to read as follows:

**§ 1.431(c)(6)–1 Mortality tables used to determine current liability.**

(a) *Mortality tables used to determine current liability.* In accordance with section 431(c)(6)(D), the mortality assumptions that apply to a single-employer defined benefit plan for the plan year pursuant to sections 430(h)(3)(A) and 430(h)(3)(D) and §§ 1.430(h)(3)–1(a)(1) and (a)(2)(ii) are used to determine a multiemployer plan's current liability for purposes of applying the rules of section 431(c)(6). For purposes of this paragraph (a), either the generational mortality tables used pursuant to § 1.430(h)(3)–1(b) or the static mortality tables used pursuant to § 1.430(h)(3)–1(c) are permitted to be used without regard to whether the plan is a small plan. However, substitute mortality tables under §§ 1.430(h)(3)–1(a)(2)(i) and 1.430(h)(3)–2 are not permitted to be used for purposes of this paragraph (a).

(b) *Applicability date.* This section applies for plan years beginning on or after January 1, 2023.

■ **Par. 4.** Section 1.433(h)(3)–1 is revised to read as follows:

**§ 1.433(h)(3)–1 Mortality tables used to determine current liability.**

(a) *Mortality tables used to determine current liability.* In accordance with section 433(h)(3)(B), the mortality assumptions that apply to a single-employer defined benefit plan for the plan year pursuant to sections 430(h)(3)(A) and 430(h)(3)(D) and §§ 1.430(h)(3)–1(a)(1) and (a)(2)(ii) are used to determine a cooperative and small-employer charity (CSEC) plan's current liability under section 433(h). For purposes of this paragraph (a), either the generational mortality tables used pursuant to § 1.430(h)(3)–1(b) or the static mortality tables used pursuant to § 1.430(h)(3)–1(c) are permitted to be used without regard to whether the plan is a small plan. However, substitute mortality tables under §§ 1.430(h)(3)–1(a)(2)(i) and 1.430(h)(3)–2 are not permitted to be used for purposes of this paragraph (a).

(b) *Applicability date.* This section applies for plan years beginning on or after January 1, 2023.

**Douglas W. O'Donnell,**  
*Deputy Commissioner for Services and Enforcement.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 51**

[EPA–HQ–OAR–2021–0420; FRL–8371–02–OAR]

RIN 2060–AV24

**Air Quality: Revision to the Regulatory Definition of Volatile Organic Compounds—Exclusion of (2E)-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz(E))**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is proposing to revise the EPA's regulatory definition of volatile organic compounds (VOC) under the Clean Air Act (CAA). This action proposes to add (2E)-1,1,1,4,4,4-hexafluorobut-2-ene (also known as *trans*-1,1,1,4,4,4-hexafluorobut-2-ene, and HFO-1336mzz(E); CAS number 66711–86–2) to the list of compounds

excluded from the regulatory definition on the basis that this compound makes a negligible contribution to tropospheric ozone (O<sub>3</sub>) formation.

**DATES:** Comments must be received on or before June 27, 2022.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-HQ-OAR-2021-0420, by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting comments.
- **Mail:** U.S. Environmental Protection Agency, EPA Docket Center, Docket No. EPA-HQ-OAR-2021-0420, Office of Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- **Hand Delivery or Courier (by scheduled appointment only):** EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

**Instructions:** All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID-19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Souad Benromdhane, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Mail Code C539-07, Environmental

Protection Agency, Research Triangle Park, NC 27711; telephone: (919) 541-4359; fax number: (919) 541-5315; email address: [benromdhane.souad@epa.gov](mailto:benromdhane.souad@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### General Information

**Written comments:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2021-0420, at <https://www.regulations.gov/> (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov/> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Due to public health concerns related to COVID-19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

The EPA continues to monitor information carefully and continuously from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners

so that we can respond rapidly as conditions change regarding COVID-19.

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#### I. Does this action apply to me?

Entities potentially affected by this proposed rule include, but are not necessarily limited to, the following: State and local air pollution control agencies that adopt and implement regulations to control air emissions of VOC; and industries manufacturing and/or using HFO-1336mzz(E) for use in foam blowing, refrigeration, as well as applications in solvents and aerosol propellants, and other minor uses. Potential entities that may be affected by this action include the following:

TABLE 1—POTENTIALLY AFFECTED ENTITIES BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS code	Description of regulated entities
Industry .....	325120	Industrial Gas Manufacturing.
Industry .....	333242	Semiconductor Machinery Manufacturing.
Industry .....	325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
Industry .....	326140	Polystyrene Foam Product Manufacturing.
Industry .....	326150	Urethane and Other Foam Product (except Polystyrene) Manufacturing.

TABLE 1—POTENTIALLY AFFECTED ENTITIES BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE—Continued

Category	NAICS code	Description of regulated entities
Industry .....	333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
Industry .....	3363	Motor Vehicle Parts Manufacturing.
Industry .....	336611	Ship Building and Repairing.
Industry .....	336612	Boat Building.
Industry .....	339999	All other Miscellaneous Manufacturing.

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities that might be affected by this deregulatory action. This table lists the types of entities that the EPA is now aware of that could potentially be affected to some extent by this action. Other types of entities not listed in the table could also be affected to some extent. To determine whether your entity is directly or indirectly affected by this action, you should consult your state or local air pollution control and/or air quality management agencies.

## II. Background

### A. The EPA's VOC Exemption Policy

Tropospheric O<sub>3</sub>, commonly known as smog, is formed when VOC and nitrogen oxides (NO<sub>x</sub>) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of O<sub>3</sub>, the EPA and state governments limit the amount of VOC that can be released into the atmosphere. Volatile organic compounds form O<sub>3</sub> through atmospheric photochemical reactions, and different VOC have different levels of reactivity. That is, different VOC do not react to form O<sub>3</sub> at the same speed or form different amounts of O<sub>3</sub>. Some VOC react more slowly or form less O<sub>3</sub>; therefore, changes in their emissions have limited effects on local or regional O<sub>3</sub> pollution episodes. It has been the EPA's policy since 1971 that certain organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC to focus VOC control efforts on compounds that significantly affect O<sub>3</sub> concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOC. The EPA lists compounds that it has determined to be negligibly reactive in its regulations as being excluded from the regulatory definition of VOC (40 CFR 51.100(s)).

The CAA requires the regulation of VOC for various purposes. Section 302(s) of the CAA specifies that the EPA

has the authority to define the meaning of "VOC" and, hence, what compounds shall be treated as VOC for regulatory purposes. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) ("1977 Recommended Policy") and was supplemented subsequently with the "Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans" (70 FR 54046, September 13, 2005) ("2005 Interim Guidance"). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOC for regulatory purposes and, therefore, are subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 Recommended Policy.

The EPA has used three different metrics to compare the reactivity of a specific compound to that of ethane: (i) The rate constant for reaction with the hydroxyl radical (OH) (known as  $k_{OH}$ ); (ii) the maximum incremental reactivity (MIR) on a reactivity per unit mass basis; and (iii) the MIR expressed on a reactivity per mole basis. Differences between these three metrics are discussed below.

The  $k_{OH}$  is the rate constant of the reaction of the compound with the OH radical in the air. This reaction is often, but not always, the first and rate-limiting step in a series of chemical reactions by which a compound breaks down in the air and contributes to O<sub>3</sub> formation. If this step is slow, the compound will likely not form O<sub>3</sub> at a very fast rate. The  $k_{OH}$  values have long been used by the EPA as metrics of photochemical reactivity and O<sub>3</sub>-

forming activity, and they were the basis for most of the EPA's early exemptions of negligibly reactive compounds from the regulatory definition of VOC. The  $k_{OH}$  metric is inherently a molar-based comparison, *i.e.*, it measures the rate at which molecules react.

The MIR, both by mole and by mass, is a more updated metric of photochemical reactivity derived from a computer-based photochemical model, and it has been used as a metric of reactivity since 1995. This metric considers the complete O<sub>3</sub>-forming activity of a compound over multiple hours and through multiple reaction pathways, not merely the first reaction step with OH. Further explanation of the MIR metric can be found in Carter (1994).

The EPA has considered the choice between MIRs with a molar or mass basis for the comparison to ethane in past rulemakings and guidance. In the 2005 Interim Guidance, the EPA stated:

[A] comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect ozone concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds.

When reviewing compounds that have been suggested for VOC-exempt status, EPA will continue to compare them to ethane using  $k_{OH}$  expressed on a molar basis and MIR values expressed on a mass basis.<sup>1</sup>

The 2005 Interim Guidance notes that the EPA will consider a compound to be negligibly reactive if it is equally as or less reactive than ethane based on either  $k_{OH}$  expressed on a molar basis *or* MIR values expressed on a mass basis (70 FR 54046).

The molar comparison of MIR is more consistent with the original smog chamber experiments, which compared equal molar concentrations of individual VOC, supporting the selection of ethane as the threshold,

<sup>1</sup> Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans, 2005, US Environmental Protection Agency, Document # 05-18015 (70 FR 54046). And could be found at this link: <https://www.govinfo.gov/content/pkg/FR-2005-09-13/pdf/05-18015.pdf>.

while the mass-based comparison of MIR is consistent with how MIR values and other reactivity metrics are applied in reactivity-based emission limits. It is, however, important to note that the mass-based comparison is less restrictive than the molar-based comparison in that more compounds would qualify as negligibly reactive.

Given the two goals of the exemption policy articulated in the 2005 Interim Guidance, the EPA believes that ethane continues to be an appropriate threshold for defining negligible reactivity. And, to encourage the use of environmentally beneficial substitutions, the EPA believes that a comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect O<sub>3</sub> concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds.

The 2005 Interim Guidance also noted that concerns have sometimes been raised about the potential impact of a VOC exemption on environmental endpoints other than O<sub>3</sub> concentrations, including fine particle formation, air toxics exposures, stratospheric O<sub>3</sub> depletion, and climate change. The EPA has recognized, however, that there are existing regulatory or non-regulatory programs that are specifically designed to address these issues, and the EPA continues to believe in general that the impacts of VOC exemptions on environmental endpoints other than O<sub>3</sub> formation can be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the O<sub>3</sub> National Ambient Air Quality Standards (NAAQS), and VOC exemption decisions will continue to be based primarily on consideration of a compound's contribution to O<sub>3</sub> formation. However, if the EPA determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, then the EPA may exercise its judgment accordingly in deciding whether to grant an exemption.

#### B. Petition To List HFO-1336mzz(E) as an Exempt Compound

The Chemours Company submitted a petition to the EPA on November 30, 2016, requesting that (2E)-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz(E); CAS number 66711-86-2) be exempted from the regulatory definition of VOC. The petition was based on the argument that HFO-1336mzz(E) has low reactivity

(i.e., 0.011 g of O<sub>3</sub>/g of HFO-1336mzz(E)) relative to the MIR of ethane (0.28 g O<sub>3</sub>/g). The petitioner indicated that HFO-1336mzz(E) may be used in a variety of applications in foam expansion or blowing agents where it has significant performance and energy-saving advantages. Chemours has developed HFO-1336mzz(E) to support reductions in emissions of greenhouse gases (GHGs). The global warming potentials GWP for HFO-1336mzz(E) are estimated as 26, 7, and 2 for time horizons of 20, 100, and 500 years, respectively as estimated by (Osterstrom *et al.*, 2017). The World Meteorological Organization provided a 100-year GWP of 16 in its scientific assessment of O<sub>3</sub> depletion under the global ozone research and monitoring project.<sup>2</sup> Hence, HFO-1336mzz(E) can serve as a replacement for several higher global warming potential (>700 GWP) compounds for use in polyurethane rigid insulating foams, among others, many of which were removed from Significant New Alternatives Policy (SNAP) acceptable lists beginning on January 1, 2017, or January 1, 2020. The Petitioner stated that manufacturers and formulators of polyurethane foams and refrigeration equipment need access to HFO-1336mzz(E) to meet VOC limits on their products without impairing performance.

To support its petition, Chemours referenced several documents, including one peer-reviewed journal article on HFO-1336mzz(E) reaction rates (Osterstrom *et al.*, 2017). Chemours also provided a supplemental technical report on the MIR of HFO-1336mzz(E) (Carter, 2011a). Per this report, the MIR of HFO-1336mzz(E) is 0.011 g O<sub>3</sub>/g HFO-1336mzz(E) on the mass-based MIR scale. This reactivity rate is much lower than that of ethane (0.28 g O<sub>3</sub>/g ethane). The reactivity rate  $k_{OH}$  for the gas-phase reaction of OH radicals with HFO-1336mzz(E) ( $k_{OH}$ ) has been measured to be  $1.72 \pm 0.42 \times 10^{-13}$  centimeter (cm)<sup>3</sup>/molecule-seconds at ~300 degrees Kelvin (K) (Osterstrom *et al.*, 2017). This  $k_{OH}$  rate is lower than that of ethane ( $k_{OH}$  of ethane =  $2.4 \times 10^{-13}$  cm<sup>3</sup>/molecule-sec at ~298 K) even when uncertainty is considered and, therefore, suggests that HFO-1336mzz(E) is less or equally reactive than ethane. In most cases, chemicals with high  $k_{OH}$  values also have high MIR values, but for HFO-1336mzz(E), the products that

are formed in subsequent reactions are expected to be poly fluorinated compounds, which do not contribute to O<sub>3</sub> formation (Osterstrom *et al.*, 2017; Carter 2011a). Based on the current scientific understanding of tetrafluoroalkene reactions in the atmosphere, it is unlikely that the actual O<sub>3</sub> impact on a mass basis would equal or exceed that of ethane in the scenarios used to calculate VOC reactivity in Osterstrom *et al.* (2017), in line with Baasandorj *et al.* (2011) and Carter (2011a).

To address the potential for stratospheric O<sub>3</sub> impacts, the petitioner contended that, because the atmospheric lifetime of HFO-1336mzz(E) due to loss by OH reaction was estimated to be relatively short and it does not contain chlorine or bromine, it is not expected to contribute to the depletion of the stratospheric O<sub>3</sub> layer (Osterstrom *et al.*, 2017; Baasandorj *et al.*, 2011).

#### III. The EPA's Assessment of the Petition

The EPA is proposing to respond to the petition to revise the EPA's regulatory definition of VOC for exemption of HFO-1336mzz(E). This action is based on consideration of the compound's low contribution to tropospheric O<sub>3</sub> and the low likelihood of risk to human health or the environment, including stratospheric O<sub>3</sub> depletion, toxicity, and climate change. Additional information on these topics is provided in the following sections.

##### A. Contribution to Tropospheric Ozone Formation

As noted in studies cited by the petitioner, HFO-1336mzz(E) has a MIR value of 0.011 g O<sub>3</sub>/g VOC for "averaged conditions," versus 0.28 g O<sub>3</sub>/g VOC for ethane (Carter, 2011). Therefore, the EPA considers HFO-1336mzz(E) to be negligibly reactive and eligible for VOC-exempt status in accordance with the Agency's long-standing policy that compounds should so qualify where either reactivity metric ( $k_{OH}$  expressed on a molar basis or MIR expressed on a mass basis) indicates that the compound is less reactive than ethane. While the overall atmospheric reactivity of HFO-1336mzz(E) was not studied in an experimental smog chamber, the chemical mechanism derived from other chamber studies (Carter, 2011) was used to model the complete formation of O<sub>3</sub> for an entire single day under realistic atmospheric conditions (Carter, 2011a). Therefore, the EPA believes that the MIR value calculated in the Carter study submitted by the petitioner is reliable as

<sup>2</sup> WMO, 2018. World Meteorological Organization, *Scientific Assessment of Ozone Depletion: 2018*, Global Ozone Research and Monitoring Project—Report No. 58, 588 pp., Geneva, Switzerland, 2018. Available online at: <https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf>.

it was supported by Osterstrom *et al.* (2017).

Table 2 presents three reactivity metrics for HFO-1336mzz(E) as they compare to ethane.

TABLE 2—REACTIVITIES OF ETHANE AND HFO-1336MZZ(E)

Compound	$k_{OH}$ (cm <sup>3</sup> /molecule-sec)	Maximum incremental reactivity (MIR) (g O <sub>3</sub> /mole VOC)	Maximum incremental reactivity (MIR) (g O <sub>3</sub> /g VOC)
Ethane .....	$2.4 \times 10^{-13}$	8.4	0.28
HFO-1336mzz(E) .....	$1.72 \times 10^{-13}$	1.8	0.011

**Notes:**

$k_{OH}$  value at 298 K for ethane is from Atkinson *et al.* (2006; page 3626).

$k_{OH}$  value at 300 K for HFO-1336mzz(E) is from Osterstrom (2017) and Baasandorj (2011).

Mass-based MIR value (g O<sub>3</sub>/g VOC) of ethane is from Carter (2011).

Mass-based MIR value (g O<sub>3</sub>/g VOC) of HFO-1336mzz(E) is from a supplemental report by Carter (2011a).

Molar-based MIR (g O<sub>3</sub>/mole VOC) values were calculated from the mass-based MIR (g O<sub>3</sub>/g VOC) values using the number of moles per gram of the relevant organic compound.

The reaction rate of HFO-1336mzz(E) with the OH radical ( $k_{OH}$ ) has been measured to be  $1.72 \times 10^{-13}$  cm<sup>3</sup>/molecule-sec (Osterstrom *et al.*, 2017); other reactions with O<sub>3</sub> and the nitrate radical were negligibly small. The corresponding reaction rate of ethane with OH is  $2.4 \times 10^{-13}$  cm<sup>3</sup>/molecule-sec (Atkinson *et al.*, 2006). The data in Table 2 show that HFO-1336mzz(E) has a lower  $k_{OH}$  value than ethane, meaning that it initially reacts slower or as fast in the atmosphere as ethane. However, the resulting unsaturated fluorinated compounds in the atmosphere are short lived and react more slowly to form O<sub>3</sub> (Osterstrom *et al.*, 2017; Baasandorj *et al.*, 2011). The mass-based MIR is 0.011 g O<sub>3</sub>/g VOC and much lower than that of ethane.

A molecule of HFO-1336mzz(E) is much less reactive than a molecule of ethane in terms of complete O<sub>3</sub>-forming activity, as shown by the molar-based MIR (g O<sub>3</sub>/mole VOC) values. Likewise, one gram of HFO-1336mzz(E) has a lower capacity than one gram of ethane to form O<sub>3</sub> in terms of a mass-based MIR. Thus, following the 2005 Interim Guidance, the EPA proposes to find HFO-1336mzz(E) to be eligible for exemption from the regulatory definition of VOC based on both the molar- and mass-based MIR.

#### B. Potential Impacts on Other Environmental Endpoints

The EPA's proposed decision to exempt HFO-1336mzz(E) from the regulatory definition of VOC is based on our findings above. However, as noted in the 2005 Interim Guidance, the EPA reserves the right to exercise its judgment in certain cases where an exemption is likely to result in a significant increase in the use of a compound and a subsequent

significantly increased risk to human health or the environment. In this case, the EPA does not find that exemption of HFO-1336mzz(E) would result in an increase of risk to human health or the environment, regarding stratospheric O<sub>3</sub> depletion, toxicity, and climate change. Additional information on these topics is provided in the following sections.

#### 1. Contribution to Stratospheric Ozone Depletion

The SNAP program is the EPA's program to evaluate and regulate substitutes for end-uses historically using O<sub>3</sub>-depleting chemicals. Under section 612(c) of the CAA, the EPA is required to identify and publish lists of acceptable and unacceptable substitutes for class I or class II O<sub>3</sub>-depleting substances. Per the SNAP program findings, the ODP of HFO-1336mzz(E) is zero. The SNAP program has listed HFO-1336mzz(E) as an acceptable substitute for a number of foam-blowing end-uses provided in 85 FR 79863, December 11, 2020 (USEPA, 2020).

HFO-1336mzz(E) is unlikely to contribute to the depletion of the stratospheric O<sub>3</sub> layer. The O<sub>3</sub> depletion potential (ODP) of HFO-1336mzz(E) is expected to be negligible based on several lines of evidence: the absence of chlorine or bromine in the compound and the atmospheric reactions described in Carter (2008). Because HFO-1336mzz(E)'s atmospheric lifetime is short relative to the time scale for mixing within the troposphere, it will decay before it has a chance to reach the stratosphere and, thus, will not participate in O<sub>3</sub> destruction.

#### 2. Toxicity

Based on screening assessments of the health and environmental risks of HFO-1336mzz(E), the SNAP program

anticipated that users will be able to use the compound without significantly greater health risks than presented by the use of other available substitutes for the same end uses (USEPA, 2020).

The EPA anticipates that HFO-1336mzz(E) will be used consistent with the recommendations specified in the manufacturer's safety data sheet (SDS) (Chemours, 2016). According to the SDS, potential health effects from inhalation of HFO-1336mzz(E) include skin or eye irritation or frostbite. Exposure to high concentrations of HFO-1336mzz(E) from misuse or intentional inhalation abuse may cause irregular heartbeat. In addition, HFO-1336mzz(E) could cause asphyxiation if air is displaced by vapors in a confined space. The Workplace Environmental Exposure Limit (WEEL) committee of the Occupational Alliance for Risk Science (OARS) reviewed available animal toxicity data and recommends a WEEL for the workplace of 400 parts per million (ppm) (2680 mg/m<sup>3</sup>)<sup>3</sup> time-weighted average (TWA) for an 8-hour workday, as later published in 2019 in *Toxicology and Industrial Health* ("Trans-1,1,1,4,4,4-hexafluoro-2-butene," 2019).<sup>4</sup> This WEEL was derived based on reduced male body weight gain in the 13-week rat inhalation toxicity study (TNO, 2016a, and TNO, 2016b), based on the point of departure of NOAEL of 7500 ppm. This was also the NOAEL for the developmental toxicity study where developmental effects were only

<sup>3</sup> Occupational Alliance for Risk Science (OARS-WEELs)- HFO-1336mzz(E), 2018; [https://www.tera.org/OARS/PDF\\_documents/O3\\_trans-1-1-1-4-4-4-hexafluoro-2-butene-\(hfo-1336mzz-e\).pdf](https://www.tera.org/OARS/PDF_documents/O3_trans-1-1-1-4-4-4-hexafluoro-2-butene-(hfo-1336mzz-e).pdf).

<sup>4</sup> Trans-1,1,1,4,4,4-hexafluoro-2-butene (HFO-1336mzz(E)) (2018). (2019). *Toxicology and Industrial Health*, 35(3), 204–210. <https://doi.org/10.1177/0748233719825529>.

observed at maternally toxic levels. The EPA anticipates that users will be able to meet the WEEL and address potential health risks by following requirements and recommendations in the SDS and other safety precautions common to the refrigeration and air conditioning industry.

HFO-1336mzz(E) is not regulated as a hazardous air pollutant (HAP) under title I of the CAA. Also, it is not listed as a toxic chemical under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA).

The Toxic Substances Control Act (TSCA) gives the EPA authority to assess and prevent potential unreasonable risks to human health and the environment before a new chemical substance is introduced into commerce. Section 5 of TSCA requires manufacturers and importers to notify the EPA before manufacturing or importing a nonexempt new chemical substance by submitting a Premanufacture Notice (PMN) prior to the manufacture (including import) of the chemical substance. Under the TSCA New Chemicals Program, the EPA then assesses whether an unreasonable risk may, or will, be presented by the expected manufacturing, processing, distribution in commerce, use, and disposal of the new substance. Based on its review of a PMN and a Significant New Use Notice (SNUN) for HFO-1336mzz(E), the EPA has determined that use of HFO-1336mzz(E) in consumer products or use other than as described in the PMN and SNUN, may cause serious chronic health effects. To address concerns identified during the PMN review of HFO-1336mzz(E), the EPA issued a Significant New Use Rule (SNUR) under TSCA on May 16, 2016, to require submission of a SNUN to the EPA at least 90 days before manufacturing or processing of HFO-1336mzz(E) for any uses in consumer products or any use other than as described in the PMN (81 FR 30451, 30462, May 16, 2016). The required notification will provide the EPA with the opportunity to evaluate the intended use before it occurs and, if necessary, to prohibit or limit that activity to protect against an unreasonable risk. The EPA received a SNUN for a significant new use of HFO-1336mzz(E) in 2017 and modified the SNUR in June 2021 based on its determination for the SNUN (86 FR 30210, 30215, June 7, 2021).<sup>5</sup> The EPA, therefore, believes that existing programs address the risk of toxicity

associated with the use of HFO-1336mzz(E).

The EPA recognizes that both HFO-1336mzz(E) and its atmospheric breakdown product trifluoroacetic acid (TFA) are members of the broad class of compounds known as per- and poly-fluoroalkyl substances (PFAS), even though they are not among the PFAS currently listed or targeted for specific Agency action. Many PFAS are highly mobile in various media, some are volatile and can be transported long distances in air and/or in water and widely distributed in the environment. Some studies suggest that PFAS emitted to air can result in human exposures in other media such as source/surface or drinking waters even though the emissions origin may be distant from receptor water bodies.<sup>6</sup> Some PFAS are persistent in the environment and in the human body and can accumulate over time. There is evidence that exposure to certain PFAS can lead to adverse human health effects (e.g., low infant birth weights, immune system effects, cancer, and thyroid disruption). Numerous states have developed health-based (e.g., drinking water) standards for various PFAS. The Environmental Effects Assessment Panel for the Montreal Protocol (EEAP) has considered the production of TFA as a breakdown product of HFCs and HFOs and has found, “Projected future increased loadings of TFA to playas, land-locked lakes, and the oceans due to continued use of HCFCs, HFCs, and replacement products such as HFOs are still judged to present negligible risks for aquatic organisms and humans.”<sup>7</sup> In its most recent assessment report (2018 Assessment Report), EEAP found, “Overall, there is no new evidence that contradicts the conclusion of our previous Assessments that exposure to current and projected concentrations of salts of TFA in surface waters present a minimal risk to the health of humans and the environment.”<sup>8</sup>

<sup>6</sup> <https://pubs.acs.org/doi/abs/10.1021/acs.est.0c06580>.

<sup>7</sup> UNEP, 2015. Environmental Effects Of Ozone Depletion And Its Interactions With Climate Change: 2014 Assessment of the Montreal Protocol. United Nations Environment Programme (UNEP), Nairobi. This document accessible at: [https://ozone.unep.org/sites/default/files/2019-05/eeap\\_report\\_2014.pdf](https://ozone.unep.org/sites/default/files/2019-05/eeap_report_2014.pdf).

<sup>8</sup> UNEP, 2019. Environmental Effects and Interactions of Stratospheric Ozone Depletion, UV Radiation, and Climate Change: 2018 Assessment Report of the Montreal Protocol. United Nations Environment Programme (UNEP), Nairobi. This document accessible at: [https://ozone.unep.org/sites/default/files/2019-04/EEAP\\_assessment-report-2018%20%282%29.pdf](https://ozone.unep.org/sites/default/files/2019-04/EEAP_assessment-report-2018%20%282%29.pdf).

### 3. Contribution to Climate Change

The Intergovernmental Panel on Climate Change (IPCC) Fifth Assessment Report (IPCC AR5) does not provide an estimate for HFO-1336mzz(E) global warming potential (GWP).<sup>9</sup> The HFO-1336mzz(E) GWP on a 100-year time horizon was calculated to be 7 in 1 study by Osterstrom *et al.* (2017) and 32 (atmospherically well-mixed) and 14 (lifetime-adjusted) in another study by Baasandorj *et al.* (2018). However, the WMO (2018) calculated the 100-year GWP for HFO-1336mzz(E) as 16. Species with double bonds assembled in the Intergovernmental Panel on Climate Change Fifth Assessment Report (Table 8.A.1) indicate lower GWP than species without a double bond. However, the GWP of 14 approximated by (Baasandorj *et al.*, 2018), and the gas-phase degradation of HFO-1336mzz(E) is not expected to lead to a significant formation of atmospherically long-lived species. According to the SNAP rule, HFO-1336mzz(E)'s GWP of 16 is lower than those of some of the substitutes in a variety of foam blowing and refrigeration end-uses, solvents, and aerosol propellants (USEPA, 2020). HFO-1336mzz(E) was developed to replace other chemicals used for similar end-uses with GWP ranging from 1 to 1,300 such as the refrigerant 1,1,1,2-tetrafluoroethane (R-134a), among others. The petitioner claims that HFO-1336mzz(E) is a better alternative to other substitutes in foam expansion or blowing agents for use in polyurethane rigid insulating foams. Specifically, HFO-1336mzz(E) will provide significant performance and energy saving advantages and reduce climate change impacts both directly by its relatively low GWP and indirectly by decreasing energy consumption throughout the lifecycle of insulated foams in several applications.

### C. Conclusions

The EPA proposes that HFO-1336mzz(E) is negligibly reactive with respect to its contribution to tropospheric O<sub>3</sub> formation and, thus,

<sup>9</sup> IPCC, 2013: Climate Change 2013: Chapter 8, Myhre, G., D. Shindell, F.-M. Bréon, W. Collins, J. Fuglestad, J. Huang, D. Koch, J.-F. Lamarque, D. Lee, B. Mendoza, T. Nakajima, A. Robock, G. Stephens, T. Takemura and H. Zhang, 2013: Anthropogenic and Natural Radiative Forcing. In: Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Stocker, T.F., D. Qin, G.-K. Plattner, M. Tignor, S.K. Allen, J. Boschung, A. Nauels, Y. Xia, V. Bex and P.M. Midgley (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA. [https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5\\_Chapter08\\_FINAL.pdf](https://www.ipcc.ch/site/assets/uploads/2018/02/WG1AR5_Chapter08_FINAL.pdf).

<sup>5</sup> <https://www.govinfo.gov/content/pkg/FR-2021-06-07/html/2021-11768.htm>.

may be exempted from the EPA's definition of VOC in 40 CFR 51.100(s). HFO-1336mzz(E) has been listed as acceptable for use as a blowing agent in several end-uses under the SNAP program (USEPA, 2020). The EPA has also determined that exemption of HFO-1336mzz(E) from the regulatory definition of VOC will not result in an increase of risk to human health and the environment, and, to the extent that use of this compound does have impacts on other environmental endpoints, those impacts are adequately managed by existing programs. For example, HFO-1336mzz(E) has a similar or lower stratospheric O<sub>3</sub> depletion potential than available substitutes in those end-uses, and the toxicity risk from using HFO-1336mzz(E) is not significantly greater than the risk from using other available alternatives for the same uses. The EPA has concluded that non-tropospheric O<sub>3</sub>-related risks associated with potential increased use of HFO-1336mzz(E) are adequately managed by SNAP. The EPA does not expect significant use of HFO-1336mzz(E) in applications not covered by the SNAP program. To the extent that the compound is used in other applications not already reviewed under SNAP or under the New Chemicals Program under TSCA, the SNUR in place under TSCA requires that any significant new use of a chemical be reported to the EPA using a Significant New Use Notice (SNUN). Any significant new use of HFO-1336mzz(E) would, thus, need to be evaluated by the EPA, and the EPA will continually review the availability of acceptable substitute chemicals under the SNAP program.

This class of PFAS is highly varied, and variations in structure may result in (yet unknown) differences in environmental mobility and toxicity. The agency's ongoing work in PFAS is based on the recent PFAS Strategic Roadmap: EPA's Commitments to Action 2021–2024, which lays out an agenda and actions that have yet to be fully realized. Part of that plan is to better understand the environmental mobility, toxicity, and treatability of various congeners. There is much that we do not know about PFAS in general and for specific compounds. Therefore, EPA is seeking public comment on whether and how EPA should consider information on and properties of PFAS compounds beyond those properties related to the VOC exemption program and how it might impact the VOC delisting decision.

#### IV. Proposed Action

The EPA is responding to the petition by proposing to revise its regulatory

definition of VOC at 40 CFR 51.100(s) to add HFO-1336mzz(E) to the list of compounds that are exempt from the regulatory definition of VOC because it is less reactive than ethane based on a comparison of mass-based MIR and molar-based MIR metrics and is, therefore, considered negligibly reactive. As a result of this action, if an entity uses or produces this compound and is subject to the EPA regulations limiting the use of VOC in a product, limiting the VOC emissions from a facility, or otherwise controlling the use of VOC for purposes related to attaining the O<sub>3</sub> NAAQS, this compound will not be counted as a VOC in determining whether these regulatory obligations have been met. This action would affect whether this compound is considered a VOC for state regulatory purposes to reduce O<sub>3</sub> formation, if a state relies on the EPA's regulatory definition of VOC. States are not obligated to exclude from control as a VOC those compounds that the EPA has found to be negligibly reactive. However, no state may take credit for controlling this compound in its O<sub>3</sub> control strategy. Consequently, reductions in emissions for this compound will not be considered or counted in determining whether states have met the rate of progress requirements for VOC in State Implementation Plans or in demonstrating attainment of the O<sub>3</sub> NAAQS.

#### V. Statutory and Executive Order Reviews

##### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

##### B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. It does not contain any recordkeeping or reporting requirements.

##### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action removes HFO-1336mzz(E) from the regulatory definition of VOC and, thereby, relieves manufacturers, distributors, and users of the compound from tropospheric O<sub>3</sub>

requirements to control emissions of the compound.

##### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

##### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

##### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. This proposed rule removes HFO-1336mzz(E) from the regulatory definition of VOC and, thereby, relieves manufacturers, distributors, and users from tropospheric O<sub>3</sub> requirements to control emissions of the compound. Thus, Executive Order 13175 does not apply to this action.

##### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045, because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Since HFO-1336mzz(E) is utilized in specific industrial applications where children are not present and dissipates quickly (e.g., lifetime of 22 days) with short-lived end products, there is no exposure or disproportionate risk to children. This action removes HFO-1336mzz(E) from the regulatory definition of VOC and, thereby, relieves manufacturers, distributors, and users from tropospheric O<sub>3</sub> requirements to control emissions of the compound.

##### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a

significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action removes HFO-1336mzz(E) from the regulatory definition of VOC and, thereby, relieves manufacturers, distributors, and users of the compound from tropospheric O<sub>3</sub> requirements to control emissions of the compound.

### *K. Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the proposed action is published in the **Federal Register**. Filing a petition for review by the Administrator of this proposed action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be filed and shall not postpone the effectiveness of such action. Thus, any petitions for review of this action related to the exemption of HFO-1336mzz(E) from the regulatory definition of VOC must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date proposed action is published in the **Federal Register**.

### VII. References

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- TNO (Netherlands Organization for Applied Scientific Research). (2016b) Inhalation prenatal developmental toxicity study with HFO-1336mzz(E) in rats. Report No. V20685. TNO Company, Netherlands.
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- USEPA, 2020. Protection of Stratospheric Ozone: Determination 36 for Significant New Alternatives Policy Program December 11, 2020. 85 FR 79863. Available online at: <https://www.govinfo.gov/content/pkg/FR-2020-12-11/pdf/2020-23861.pdf>.

### List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Michael S. Regan,  
Administrator.

For reasons stated in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

### PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

### Subpart F—Procedural Requirements

■ 2. Section 51.100 is amended by revising the introductory text of paragraph (s)(1).

#### § 51.100 Definitions.

\* \* \* \* \*

(s) \* \* \*

(1) This includes any such organic compound other than the following, which have been determined to have negligible photochemical reactivity: Methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub> or HFE-7100); 2-(difluoromethoxymethyl)-

1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub> or HFE-7200); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate; 1,1,1,2,2,3,3,3-heptafluoro-3-methoxypropane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500); 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH<sub>3</sub>); 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); propylene carbonate; dimethyl carbonate; *trans*-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); *trans*-1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; *t*-butyl acetate; 1,1,2,2-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane; *cis*-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz-Z); *trans*-1,1,1,4,4,4-hexafluorobut-2-ene (HFO-1336mzz(E)); and perfluorocarbon compounds which fall into these classes:

\* \* \* \* \*

[FR Doc. 2022-08922 Filed 4-27-22; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 174 and 180

[EPA-HQ-OPP-2022-0161; FRL-9410-12-OCSPP]

### Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities March 2022

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notices of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before May 31, 2022.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest as shown in the body of this document, using the *Federal eRulemaking Portal*: <https://www.regulations.gov>. Follow the online

instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511M), main telephone number: (202) 566-2427, email address: [BPPDFRNotices@epa.gov](mailto:BPPDFRNotices@epa.gov); or Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305-7090, email address: [RDFRNotices@epa.gov](mailto:RDFRNotices@epa.gov). The mailing address for each contact person is Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

###### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the

disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/comments.html>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

##### II. What action is the Agency taking?

EPA is announcing receipt of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), summaries of the petitions that are the subject of this document, prepared by

the petitioners, are included in dockets EPA has created for these rulemakings. The dockets for these petitions are available at <https://www.regulations.gov>.

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit and the corresponding docket.

#### A. Amended Tolerance Exemptions for Non-Inerts (Except PIPS)

PP 1F8953. (EPA-HQ-OPP-2022-0273). Danstar Ferment Ag/LALLEMAND PLANT CARE, Postsrasse 20, CH-6300 Zug, Switzerland (c/o Amy Plato Roberts, P.O. Box 990, Hailey, ID 83333), requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1120 for residues of the fungicide *Streptomyces* sp. strain K61 in or on all food commodities when used in accordance with label directions and good agricultural practices. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, *Streptomyces* sp. strain K61, would not result in residues that are of toxicological concern. Contact: BPPD.

#### B. Amended Tolerances for Non-Inerts

1. PP 1E8904. (EPA-HQ-OPP-2021-0387). Interregional Research Project No. 4 (IR-4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to amend 40 CFR part 180 by removing the tolerance for residues of the insecticide cyclaniliprole, 3-bromo-N-[2-bromo-4-chloro-6-[[[1-(cyclopropylethyl)amino]carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on the raw agricultural commodity Vegetable, fruiting, group 8-10 at 0.20 ppm. Contact: RD.

2. PP 1E8935. (EPA-HQ-OPP-2021-0657). Interregional Research Project #4 (IR-4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by removing established tolerances for residues of dodecane in or on the raw agricultural commodities Apple at 5.0 ppm; Fruit, stone, crop group 12 at 5.0

ppm; Nuts, tree, crop group 14 at 0.3 ppm; and Pear at 5.0 ppm. Contact: RD.

3. PP 1E8957. (EPA-HQ-OPP-2022-0005). Interregional Research Project #4 (IR-4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to amend 40 CFR part 180 by removing the established tolerances of fomesafen, 5-(2-chloro-4-(trifluoromethyl)phenoxy)-N-(methylsulfonyl)-2-nitrobenzamide in or on the raw agricultural commodities: Cantaloupe at 0.025 parts per million (ppm); Cucumber at 0.025 ppm; Pepper, bell at 0.025 ppm; Pepper, non-bell at 0.025 ppm; Pumpkin at 0.025 ppm; Squash, summer at 0.025 ppm; Squash, winter at 0.025 ppm; Tomato at 0.025 ppm; and Watermelon at 0.025 ppm. Contact: RD.

4. PP 1E8980. (EPA-HQ-OPP-2022-0234). Interregional Research Project No. 4 (IR-4) North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606, proposes upon establishment of tolerances referenced in this document under "New Tolerances" for PP#1E8980, to remove existing tolerances in 40 CFR 180.666 for residues of the fungicide, fluxapyroxad, 3-(difluoromethyl)-1-methyl-N-(3',4',5'-trifluoro[1,1'-biphenyl]-2-yl)-1H-pyrazole-4-carboxamide in or on Coffee, green bean<sup>1</sup> at 0.2 parts per million (ppm). Contact: RD.

5. PP 1E8981. (EPA-HQ-OPP-2022-0235). Interregional Research Project No. 4 (IR-4) North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 2760, proposes upon establishment of tolerances referenced in this document under "New Tolerances" for PP#1E8981, to remove existing tolerances in 40 CFR 180.582 for residues of the fungicide pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite (methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenylcarbamate), calculated as the stoichiometric equivalent of pyraclostrobin in or on in or on Coffee, green bean at 0.3 parts per million (ppm). Contact: RD.

#### C. New Tolerance Exemptions for Non-Inerts (Except PIPS)

1. PP 0F8873. (EPA-HQ-OPP-2021-0422). Amoéba SA, 38 ave des Frères Montgolfier, F-69680 Chassieu, France (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192), requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide and systemic resistance inducer Lysate

of *Willaertia magna* C2c Maky, in or on raw agricultural commodities and processed food. The petitioner believes no analytical method is needed because it is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation. Contact: BPPD.

2. PP 1F8943. (EPA-HQ-OPP-2022-0323). Chr. Hansen, Inc., 9015 W Maple St., Milwaukee, WI 53214, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide and nematocide *Bacillus paralicheniformis* strain CH0273 in or on all food commodities. The petitioner believes no analytical method is needed because it is not applicable. Contact: BPPD.

3. PP 1F8944. (EPA-HQ-OPP-2022-0318). Chr. Hansen, Inc., 9015 W Maple St., Milwaukee, WI 53214, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the fungicide and nematocide *Bacillus subtilis* strain CH4000 in or on all food commodities. The petitioner believes no analytical method is needed because it is not applicable. Contact: BPPD.

4. PP 1G8963. (EPA-HQ-OPP-2022-0233). NewLeaf Symbiotics, Inc., 1005 North Warson Road, St. Louis, MO 63132, requests to establish a temporary exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the insecticide *Methylobacterium extorquens* strain NLS0042 in or on all food commodities. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, *Methylobacterium extorquens* strain NLS0042 would not result in residues that are of toxicological concern. Contact: BPPD.

#### D. New Tolerance Exemptions for PIPS

PP 2F8985. (EPA-HQ-OPP-2022-0231). Bayer CropScience LP, 800 N Lindbergh Blvd. St. Louis, MO 63167, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectants (PIP) *Bacillus thuringiensis* Vpb4Da2 and *Brevibacillus laterosporus* Mpp75Aa1.1 in or on corn. An analytical method to detect and quantify concentrations of Mpp75Aa1.1 and Vpb4Da2 proteins expressed in corn was provided with the petition. Contact: BPPD.

#### E. New Tolerances for Non-Inerts

1. PP 0E8876. (EPA-HQ-OPP-2021-0130). Interregional Research Project No. 4 (IR-4), IR-4 Project Headquarters,

Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR part 180 by establishing a tolerance for residues of ethalfluralin, N-ethyl-N-(2-methyl-2-propenyl)-2,6-dinitro-4-(trifluoromethyl)benzenamine in or on the raw agricultural commodity Stevia, fresh leaves at 0.05 parts per million (ppm). Adequate analytical methods for determining ethalfluralin in/on appropriate raw agricultural commodities and processed commodities have been developed and validated. Contact: RD.

2. *PP 0E8882*. (EPA-HQ-OPP-2021-0153). Interregional Research Project No. 4 (IR-4), IR-4 Project Headquarters, Rutgers, The State University of NJ, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to amend 40 CFR part 180 by establishing tolerances for residues of novaluron, including its metabolites and degradates, in or on the following commodities. Compliance with the tolerance levels is to be determined by measuring only novaluron, (N-3-chloro-4-1,1,2-trifluoro-2-(trifluoromethoxy)ethoxyphenylaminocarbonyl-2,-difluorobenzamide), in or on the following raw agricultural commodities: Bean, phaseolus, forage at 15 parts per million (ppm); Cowpea forage at 15 ppm; Pea field, forage at 15 ppm; Bean phaseolus, hay at 80 ppm; Cowpea, hay at 80 ppm; and Pea, field, hay at 80 ppm. Adequate analytical methods for determining novaluron in/on appropriate raw agricultural commodities and processed commodities have been developed and validated. Contact: RD.

3. *PP 1E8904*. (EPA-HQ-OPP-2021-0387). Interregional Research Project No. 4 (IR-4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests to amend 40 CFR part 180 by establishing tolerances for residues of the insecticide cyclaniliprole, 3-bromo-N-[2-bromo-4-chloro-6-[(1-cyclopropylethyl)amino]carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, including its metabolites and degradates, in or on the raw agricultural commodities: Artichoke, globe at 1.5 parts per million (ppm); Sunflower subgroup 20B at 0.4 ppm; Pepper/eggplant ground 8-10B at 1.5 ppm; Tomato subgroup 8-10A at 0.6 ppm; Hog, meat at 0.01 ppm; Hog, fat at 0.015 ppm; Hog, meat byproducts at 0.015 ppm; Egg at 0.01 ppm; Poultry, meat at 0.01 ppm; Poultry, fat at 0.015 ppm; and Poultry, meat byproducts at 0.015 ppm. A practical analytical method for

Cyclaniliprole and NK-1375 using Liquid Chromatography-MS/MS is available for analysis of all plant matrices. This method has been confirmed through independent laboratory validation and is available for enforcement purposes. Contact: RD.

4. *PP 1E8935*. (EPA-HQ-OPP-2021-0657). Interregional Research Project #4 (IR-4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of dodine, N-dodecylguanidine acetate in or on the raw agricultural commodities Fruit, pome, group 11-10 at 5 parts per million (ppm); Fruit, stone, group 12-12 at 5 ppm; Nut, tree, group 14-12 at 0.3 ppm; and Olive, with pit at 0.3 ppm.. Adequate analytical methods for determining dodine in/on appropriate raw agricultural commodities and processed commodities have been developed and validated. Contact: RD.

5. *PP 1E8957*. (EPA-HQ-OPP-2022-0005). Interregional Research Project #4 (IR-4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of fomesafen, 5-(2-chloro-4-(trifluoromethyl)phenoxy)-N-(methylsulfonyl)-2-nitrobenzamide in or on the raw agricultural commodities Vegetable, bulb, group 3-07 at 0.02 parts per million (ppm); Vegetable, cucurbit, group 9 at 0.025 ppm; Vegetable, foliage of legume, except soybean, subgroup 7A at 0.05 ppm; and Vegetable, fruiting, group 8-10 at 0.025 ppm. Adequate analytical methods for determining fomesafen in/on appropriate raw agricultural commodities and processed commodities have been developed and validated. Contact: RD.

6. *PP 1E8966*. (EPA-HQ-OPP-2022-0069). Interregional Research Project #4 (IR-4), North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606, requests, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Trinexapac-ethyl in or on the raw agricultural commodity clover, forage at 8 parts per million (ppm) and clover, hay at 15 (ppm). As a result of feeding clover that has been treated with trinexapac-ethyl to livestock, the following tolerances are proposed in livestock commodities: Cattle, fat; cattle,

meat; goat, fat; goat, meat; horse, fat; horse, meat; sheep, fat; and sheep, meat at 0.03 ppm. Adequate analytical methods for determining trinexapac-ethyl in/on appropriate raw agricultural commodities and processed commodities have been developed and validated. Contact: RD.

7. *PP 1E8980*. (EPA-HQ-OPP-2022-0234). Interregional Research Project No. 4 (IR-4) North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 27606, requests to establish a tolerance in 40 CFR 180.666 for residues of the fungicide, fluxapyroxad, 3-(difluoromethyl)-1-methyl-N-(3',4',5'-trifluoro[1,1'-biphenyl]-2-yl)-1H-pyrazole-4-carboxamide in or on Coffee, green bean at 0.2 parts per million (ppm), Stevia, dried leaves at 60 ppm, and Stevia, fresh leaves at 20 ppm. The Method for the Determination of BAS 700 F (Reg. No. 5094351) and its Metabolites M700F002 (Reg. No. 5435595), M700F008 (Reg. No. 5566402) and M700F048 (Reg. No. 5570265) in Plant Matrices and Processed Fractions", Dated October 7, 2009; is used to measure and evaluate the chemical. Contact: RD.

8. *PP 1E8981*. (EPA-HQ-OPP-2022-0235). Interregional Research Project No. 4 (IR-4) North Carolina State University, 1730 Varsity Drive, Suite 210, Venture IV, Raleigh, NC 2760, requests to establish a tolerance in 40 CFR 180.582 for residues of the fungicide pyraclostrobin, (carbamic acid, [2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl]methoxy-, methyl ester) and its desmethoxy metabolite [methyl-N-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl] phenyl]carbamate), calculated as the stoichiometric equivalent of pyraclostrobin in or on Coffee, green bean at 0.3 parts per million (ppm), Stevia, dried leaves at 150 ppm, and Stevia, fresh leaves at 40 ppm. The Method for the Determination of BAS 421 F, BAS 480 F, BAS 500 F, BF 500-3, BAS 505 F, BAS 510 F, BAS 550 F, BAS 555 F, BAS 560 F and BAS 700 F in Plant Matrices", Dated June 2008 is used to measure and evaluate the chemical. Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: April 18, 2022.

**Delores Barber,**

*Director, Information Technology and Resources Management Division, Office of Program Support.*

[FR Doc. 2022-09145 Filed 4-27-22; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[WC Docket No. 17–84; FCC 22–20; FRS 83033]

### Accelerating Wireline and Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks comment on measures that the Commission may adopt to better align the financial incentives of utilities and attachers with respect to pole replacements. Specifically, the Commission seeks comment on the circumstances in which attachers should not be required to pay the entire cost of pole replacements needed to accommodate their new attachments and the proper allocation of costs in those situations, whether and how the Commission should revise its rules to address pole replacement cost issues, whether there are changes the Commission could make to its rules that would help utilities and attachers avoid disputes and expedite the resolution of pole attachment complaints, and the appropriate scope of refunds ordered by the Commission when it determines that a pole attachment rate, term, or condition is unjust and unreasonable.

**DATES:** Comments are due on or before June 27, 2022, and reply comments are due on or before July 27, 2022.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 17–84, by any of the following methods:

- *Federal Communications Commission's Website:* <https://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554. Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand

or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

#### FOR FURTHER INFORMATION CONTACT:

Michael Ray, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0357, [michael.ray@fcc.gov](mailto:michael.ray@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* (Second Further Notice) in WC Docket No. 17–84, adopted March 16, 2022, released March 18, 2022. The full text of this document is available for public inspection on the Commission's website at <https://www.fcc.gov/document/fcc-seeks-comment-resolving-disputes-over-pole-replacement-costs>. To request materials in accessible formats for people with disabilities (e.g., braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART, etc.), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

### Synopsis

#### I. Second Further Notice of Proposed Rulemaking

1. In this *Second Further Notice*, we seek comment on ways to eliminate or expedite the resolution of pole replacement disputes by establishing clear standards for when and how utilities and attachers must share in the costs of a pole replacement that is precipitated by a new attachment request. In the *Pole Replacement Declaratory Ruling*, the Bureau found that it would be contrary to the Commission's rules and policies to require a new attacher to pay the entire cost of a pole replacement when a pole already requires replacement (e.g.,

because the pole is out of compliance with current safety and utility construction standards or it has been red-tagged) at the time a request for a new or modified attachment is made. According to the Bureau, even if the new attacher might benefit from that type of pole replacement, it is not “necessitated solely as a result” of the new attachment pursuant to the language in Section 1.1408(b) of our rules and therefore the utility may not impose all make-ready costs of that pole replacement on the new attacher. The Bureau based its clarification on the cost causation and cost sharing principles codified in Section 1.1408(b). We affirm the Bureau's findings in the *Pole Replacement Declaratory Ruling* as consistent with Section 224, the Commission's rules, and past Commission precedent.

2. On July 16, 2020, NCTA—the internet & Television Association filed a Petition asking the Commission to clarify its rules in the context of pole replacements. The record developed in response to the NCTA Petition indicates significant disagreement between utilities and attachers about when a pole replacement is not “necessitated solely” by a new attachment when the circumstances do not involve a preexisting violation or red-tagged pole. We seek comment on these more ambiguous situations and the role the Commission should take in providing further guidance regarding pole replacements. We also take this opportunity to seek comment on additional scenarios in which financial responsibility for pole replacements should be shared by attachers and utilities and how those costs should be apportioned. Additionally, we seek comment on the scope of utility liability for pole attachment rate refunds when rates are found to be unjust and unreasonable.

#### A. Determining the Applicability of Cost Causation and Cost Sharing

3. In the *Pole Replacement Declaratory Ruling*, the Bureau clarified, pursuant to the language in Section 1.1408(b) of our rules, that when a new attachment request precipitates a pole replacement, but the pole must also be replaced for other reasons, the pole replacement is not “necessitated solely” by the new attachment and all of the parties that benefit from the replacement must share proportionally in the cost, including utilities. Under this standard, and consistent with the *2018 Wireline Infrastructure Order*, the Bureau made clear that this standard applies when the pole must be replaced

due to a preexisting violation or because it has been red-tagged.

4. We seek comment on whether there are additional situations in which a pole replacement is not “necessitated solely” by a new attachment request. Is it possible for a future planned pole replacement to serve as grounds for concluding that the pole must be replaced for other reasons at the time of the new attachment request? If so, in what circumstances? For example, if the utility has already scheduled the requested pole for replacement one or two years after the new attachment request is made, could we deem that known and scheduled replacement as necessary at the time that the new attachment request is made and therefore consider the replacement of the pole to not be “necessitated solely” by the new attachment? Should the Commission codify a definition of “necessitated solely” for the purposes of Section 1.1408(b) and, if so, what should that definition be? When considering situations “necessitated solely” by a need to create capacity for a new attachment, should the term “capacity” refer to both additional space needed to accommodate the new attachment and/or the need for a stronger pole to increase loading capacity? Should the Commission codify a definition of “red-tagging” or other terminology that distinguishes between priority replacements that need to be performed immediately due to the status of a pole from non-priority replacements that may be implemented at a later time? The Commission has previously described a “red-tagged” pole as one found to be non-compliant with safety standards and placed on a utility’s replacement schedule. Crown Castle argues that the Commission should employ a broader definition that includes “any pole where, based on an existing condition, the utility contends the pole must be replaced before any new attachment, or change to an existing attachment, may be made.”

5. Even if a pole replacement is necessitated for a reason other than a new attachment request, Section 1.1408(b) requires existing attachers (including the utility) to pay a proportional share of the replacement costs only if they “directly benefit” from the replacement. The Commission has previously determined that an incidental benefit is not sufficient to hold these attachers accountable for the pole replacement costs. When addressing additional circumstances to which the clarification in the *Pole Replacement Declaratory Ruling* should apply, if any, we ask that commenters specify whether any benefits that accrue

to existing attachers are direct versus incidental and how they define those terms for the purposes of their arguments. We ask that commenters be clear about the criteria that distinguish a direct benefit from an incidental benefit and cite all economic and legal authorities that support their positions.

6. We seek comments specifically addressing whether a utility directly benefits from a pole replacement that is necessary to correct a preexisting violation that the utility did not cause. As stated in the *2018 Wireline Infrastructure Order*, utilities may not hold new attachers responsible for the costs of correcting a preexisting violation. That does not necessarily mean, however, that the utility is ultimately responsible for all of the costs in all cases. Rather, the party that is responsible for the violation is responsible for the costs of correcting the violation, and the utility is authorized to seek recovery from the violating party. What are the circumstances under which existing attachers, as opposed to utilities, may be responsible for preexisting violations that require an entire pole to be replaced? In such situations, are there ways that a utility directly benefits from a pole replacement that corrects a preexisting violation within the meaning of the first two sentences of Section 1.1408(b), even if it did not cause the violation? For instance, in concluding that a utility may not hold a new attacher responsible for costs arising from the correction of safety violations caused by other attachers, the former Cable Services Bureau determined that it was up to the utility “to require other attachers to reimburse [the utility] or otherwise pay for corrections of safety violations.” In the *2018 Wireline Infrastructure Order*, the Commission found that a utility may not hold a new attacher responsible for the costs of a preexisting violation caused by another attacher or delay the completion of make-ready to accommodate a new attachment while it “attempts to identify or collect from the party who should pay for correction of the preexisting violation.” In the context of pole replacements, should we construe these precedents to mean that the utility is responsible for the costs of correcting the violation vis-à-vis the new attacher, and, therefore, directly benefits when the pole replacement needed to accommodate the new attachment corrects the violation? If so, does that financial responsibility and direct benefit require the utility to share in the costs of the replacement under Section 1.1408(b)?

7. We also seek comment on how to identify and quantify the costs of a pole replacement that are proportional to the direct benefit obtained by a utility from a pole replacement that is not necessitated solely by a new attachment request. We remain committed to the long-standing principle that when “capital costs would not have been incurred ‘but for’ the pole attachment demand . . . the attacher—the cost causer—pays for these costs.” In the context of make-ready charges for a new attachment, that includes the “direct incremental costs of making space available to the [attacher],” but excludes costs that are not required to accommodate the new attachment. Make-ready is “the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.” Make-ready charges to prepare a pole for a new attachment are “non-recurring costs for which the utility is directly compensated and as such are excluded from expenses used in the rate calculation.”

8. How should we distinguish the incremental costs attributable to the new attacher from the costs that should be attributable to utilities when a pole replacement is necessary to make space for the new attachment and for a reason that directly benefits the utility? In the context of a pole that also needs to be replaced to correct a preexisting violation or because it has been red-tagged, should the new attacher be responsible for the difference in cost between a taller or stronger pole needed to accommodate its attachment and what it would cost to replace the existing pole with one of the same type and size or strength? Is there a different way to apportion the cost of the new pole between its owner and the new attacher? How should other costs associated with pole replacements, such as the cost of transferring existing attachments to the new pole, be apportioned between the utility and new attacher? We ask that commenters submit data and documents describing and substantiating the precise costs of pole replacements in each scenario addressed above and specify the party that causes them to be incurred.

9. Finally, we seek comment on whether we should revise our cost allocation rules to modify or replace the direct benefit versus incidental benefit standard set forth in Section 1.1408(b). Is there a more equitable and efficient standard for determining when parties should share in the costs of modifying a facility? What are the costs and benefits of applying an alternate standard? We ask that commenters

proposing alternate standards detail how costs would be allocated under the proposed standard's terms in real-world scenarios, specifically addressing the economic and operational impacts on the parties, including whether the standard would allow utilities to fully recover the costs of establishing additional capacity on their poles. We also ask that commenters explain whether any proposed alternate standard would promote or deter broadband deployment or the ability of utilities and attachers to successfully negotiate pole attachment agreements, including whether it would lead to an increase or decrease in pole attachment disputes.

#### *B. Allocating Costs When Utilities Directly Benefit From Pole Replacements*

10. Attachers have represented to the Commission that utilities often seek to hold them responsible for all costs of replacing a pole that is needed to make space for a new attachment, even if all of those costs are not needed to accommodate the new attachment (*e.g.*, pole upgrades, increasing capacity beyond the needs of the new attachment). While some utilities indicate that this is not the case and that new rules in this area are unnecessary, others have not denied it or have attempted to justify it with a broad interpretation of the Commission's cost causation policy, *i.e.*, but for the new attachment request, the pole replacement would not have occurred at all, so the attacher should pay all costs of the replacement. Stated differently, some utilities contend that while implementing a pole replacement is necessitated solely by the new attachment, they should be able to enhance the pole in some way that is not necessitated by the new attachment without incurring financial responsibility for those enhancements. Attachers have also argued that utilities receive a windfall when they hold new attachers responsible for all the costs of a pole replacement because it eliminates or reduces the costs they would have otherwise had to pay to replace the pole in the future (*i.e.*, financial responsibility for the utility's deteriorating and aging infrastructure is shifted to the attacher). In particular, the white paper submitted by Charter's economist, Dr. Patricia Kravtin, states that "since the future replacement of the pole from the utility's perspective is 'an inevitable event' that it would eventually have to pay for itself, the practice of transferring the full cost of that replacement onto new attachers (who must either pay to obtain access or

choose to abandon their investment plans) results in burdens to the attaching entity far exceeding the costs they actually cause the pole owner to incur over a more meaningful time horizon." We seek comment on the conclusions reached by Dr. Kravtin as they relate to the cost allocations and causes of pole replacements. Utilities counter that the early retirement of their poles precipitated by a new attachment comes at a cost—the value they lose in a capital asset that has not yet reached the end of its useful life—and that under the Commission's cost causation policy, they are entitled to compensation for the unrealized value of a pole that would otherwise remain in service.

11. While we acknowledge that the economic and legal arguments made by utilities could have merit, we are concerned by the frequent statements in the record that attachers are being required to absorb costs that are not caused by their attachments and/or result in attachers assuming financial responsibility for a utility's capital assets. Our concern is rooted in the potential impact on the deployment of broadband networks if the financial resources available for deployments are depleted by these costs. That said, we are keenly aware of the need to carefully examine the impact any changes to our cost allocation rules may have on the ability of utilities to fully recover the costs of expanding capacity to accommodate new attachments to avoid the unintended consequence of increased attachment denials. Section 224 does not provide the Commission with authority to require utilities to replace poles when additional capacity is needed to accommodate a new attachment. Utility commenters argue that "[i]f utilities are no longer compensated for pole replacements and can no longer control the pole replacement process, many utility pole owners will decide they can no longer economically or safely replace poles on a voluntary basis for new attachers. The 'clarification' would deny new attachers access to poles that require replacement to accommodate them."

12. To evaluate and resolve these competing concerns, we seek comment on whether the Commission should revise its pole attachment rules to expressly recognize that utilities directly benefit from pole replacements that are precipitated by a new attachment request and establish clear standards for when and how utilities should be required to pay a proportional share of the total pole replacement costs. We limit our inquiries to situations where a pole replacement is needed to accommodate a new

attachment due to lack of capacity. We are aware of allegations by attachers that some utilities erroneously or disingenuously claim that an existing pole lacks capacity to accommodate a new attachment and insist that the pole must be replaced at the attacher's cost. The rules clearly prohibit such conduct by utilities, and the Commission is fully capable of adjudicating such disputes through its complaint process, and we believe that is the appropriate avenue for attachers asserting such claims to seek relief. Would clear standards on these points expedite cost dispute resolution between the parties? Or, are any disputes likely to be fact-specific and better addressed in adjudicatory proceedings? Are further cost allocation rules for pole replacements unnecessary and/or could they result in more attachment requests being denied as some utilities claim?

#### *1. Responsibility for Pole Upgrades and Modifications Unrelated to New Attachments*

13. Attachers have represented to the Commission that, when a pole replacement is needed to expand capacity for a new attachment, utilities use that pole replacement as an opportunity to upgrade a pole (*e.g.*, increase its class or grade) or expand their own use of the pole in a manner that is unrelated to the new attachment (*e.g.*, expand capacity for future use by the utility itself or to rent to a different attacher). When that occurs, attachers represent that they are held accountable for the cost of upgrade/expanded use modifications made at the same time as the make-ready for their new attachments. According to NCTA, utilities insist that they are entitled to shift those costs to the new attacher because, even if the upgrade/expanded use modifications are not required to effectuate the new attachment, the utility would not have made them if a pole replacement had not been required to accommodate the new attachment. Attachers argue that, under the Commission's rules and precedent, they may not be held accountable for such costs because they are not necessitated by the new attachment. Utilities who shift the costs of upgrade/expanded use modifications to new attachers claim that, as described above, the pole replacement required to accommodate the new attachment is the "but for" cause of those modification costs. We note that some utilities have represented to the Commission that they do not hold new attachers responsible for pole upgrades that are not required by a new attachment and that new rules are unnecessary in this area.

14. We seek comment on whether utilities directly benefit when they use pole replacements precipitated by an attachment request to upgrade or enhance their poles and whether utilities should pay a proportional share of the total pole replacement costs. As an initial matter, we seek comment on whether the Commission's existing cost allocation rules and precedent require clarification on this point. Section 1.1408(b) of the Commission's rules states, in pertinent part, that "[t]he costs of modifying a facility shall be borne . . . by all parties that directly benefit from the modification," and that each party that directly benefits from the modification shall share proportionally in its costs, but it then qualifies that language by stating, "[n]otwithstanding the foregoing, a party with a preexisting attachment to a pole . . . shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment . . . sought by another party." If a pole upgrade is necessitated at the time a pole is replaced to create capacity for a new attachment, does the text of Section 1.1408(b) allocate all costs of the pole replacement, including those for unrelated upgrade/expansion modifications, to the new attacher? Or does it merely shield other attachers, and not the utility, from bearing any upgrade costs? We note that the text of Section 1.1408(b) does not appear to include replacing a pole after receiving a modification request as an instance of "piggybacking." The third sentence of the rule states that "[a] party with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification . . . it adds to or modifies its attachment." While a "facility" may include a pole and a "modification" includes replacing a pole, adding to or modifying an attachment is not the same thing as installing a new, upgraded pole.

15. In the *Local Competition Order*, the Commission stated that an attacher is responsible for the entire cost of a new pole needed to create new capacity for its attachment "unless [other parties with attachments] expanded their own use of the facilities at the same time." In the latter event, the other parties that expanded their own use of the facilities would need to share in the cost of the new pole. This language is broader than the text of Section 1.1408(b) of the Commission's rules. Whereas the rule text speaks to pole replacements that are "necessitated solely as a result of" the

new attachment, the language in the *Local Competition Order* addresses situations where the pole replacement is an "opportunity" for the utility and other attachers to "expand their own use" of the new pole.

16. We seek comment on how to reconcile these cost attribution standards in the Commission's rules and precedent in the context of a utility using a pole replacement that is "necessitated solely" by a new attachment request as an opportunity to upgrade the requested pole in a manner that is not required by the new attachment. Does Section 1.1408(b) of our rules limit the cost-sharing statements in our precedent? Do the statements in our precedent establish a cost-sharing standard for a set of facts that is not contemplated by the codified rule?

17. Should the Commission address this issue by revising Section 1.1408(b) to expressly create a presumption that utilities directly benefit when they use a pole replacement precipitated by a new attachment request as an opportunity to upgrade the pole or expand it for its own use and should, therefore, pay a proportional share of the pole replacement costs? If so, what are the specific circumstances to which such a presumption would apply? Specifically, we seek comment on when an upgrade or expanded use of a pole by a utility confers an incidental versus direct benefit to a utility. For instance, NCTA and other commenters urge us to require utilities to share in the costs of a pole replacement that results in the utility obtaining excess capacity for its own use. The Commission has previously stated that, while that excess capacity may confer benefits on utilities, utilities are not under any obligation to share the future revenue they may receive due to that excess capacity, even if they did not share in the costs of the modification that created the excess capacity. Further, the Commission found that excess pole capacity could be "particularly cumbersome" if it remains unused for extended periods. Should these statements be understood to mean that the Commission has considered excess pole capacity to be an incidental benefit of a pole replacement rather than a direct benefit? Are there grounds for the Commission to conclude that excess capacity resulting from a pole replacement is a direct benefit to utilities and they should, therefore, share in the replacement costs? Are there other benefits that a utility obtains when a pole is replaced to accommodate a new attachment that the Commission should treat as incidental as opposed to direct? Or, as utilities claim, is it

unnecessary to modify our rules to address cost allocation when utilities use a new attachment request that precipitates a pole replacement as an opportunity to upgrade the pole or expand it for its own use? In addressing these questions, we ask that commenters be specific with respect to how they are defining incidental and direct benefits, their economic bases for those definitions, and how they apply or do not apply to each circumstance proposed as a benefit to utilities.

18. If the Commission were to adopt the presumption described above, what would be a proportional allocation of the costs of a pole replacement that is precipitated by a new attacher and then used as an opportunity for the utility to upgrade or expand its use of the pole? What are the incremental costs of upgrading the class or grade of the taller pole being installed to accommodate the new attachment? Should the new attacher be responsible for the difference in cost between a taller pole of a same type as the existing pole and the upgraded pole, along with other typical make-ready costs of a new attachment (e.g., the cost of transferring existing attachments to the new pole)? If not, what measure should be used? If the Commission revisits its position on the installation of excess pole capacity, should those costs be apportioned in a manner similar to when multiple attachers use an attachment request to upgrade their existing facilities, requiring expanded pole capacity, i.e., a ratio of the new space on the taller pole occupied by the new attacher to the total amount of excess capacity on the taller pole?

19. We also seek comment on whether adopting a presumption that utilities directly benefit from pole replacements precipitated by a new attachment when the utility uses the pole replacement as an opportunity to upgrade or expand its use of the pole would have a positive or negative effect on pole attachment negotiations and, relatedly, the deployment of broadband facilities. Would it facilitate and expedite successful negotiations by eliminating areas of dispute? Conversely, would it increase the frequency of pole attachment denials and delay the deployment of broadband networks due to utility concerns that they will not be fully compensated for the costs caused by the attachments? Are there potential adverse impacts for utility ratepayers? If so, would any of these adverse impacts be lessened if the Commission were to recognize specific circumstances under which the presumption could be rebutted? What would those circumstances be? What evidentiary

showing would utilities need to make to substantiate that circumstances exist to rebut the presumption? Do these considerations vary based on whether the pole is located in an “unserved area,” and, if so, how should that term be defined in this context?

20. Additionally, we seek comment on how the last sentence of Section 1.1408(b) should be interpreted with respect to pole replacements. That sentence states, “If a party makes an attachment to the facility after the completion of the modification, such party shall share proportionately in the cost of the modification if such modification rendered possible the added attachment.” What time period is reasonable “after” the pole replacement occurs for the subsequent attachment to share in the costs of the pole replacement? Would any subsequent attachment to a new pole be considered “rendered possible” by the pole replacement even if it occurred a significant time later?

## 2. Costs and Benefits of Early Pole Retirement

21. According to NCTA and other attachers, “[p]oles, like other utility infrastructure, have a finite life and require maintenance and intermittent replacement. Replacing an older pole with a new one necessarily allows the utility to defer the next scheduled replacement, including transfer of its facilities to the new pole, and reduces maintenance costs.” In NCTA’s view, “where existing utility infrastructure is . . . near the end of its useful life, it is unjust and unreasonable [under Section 224(b) of the Act] for pole owners to shift the entire cost of a pole replacement to a new attacher when the pole owner itself derives the predominant financial gain, including in the form of betterment, from replacing and upgrading the pole.” Attachers argue that utilities should, therefore, be required to pay a proportional share of pole replacement costs whenever a pole is replaced to accommodate a new attachment, and irrespective of whether they have otherwise improved the pole. NCTA also argues that shifting the entire cost of a pole replacement to a new attacher is inconsistent with Section 224(f) of the Act because it discriminates against new attachers “seeking to bring broadband to an unserved area by imposing unjust and unreasonable conditions upon access.”

22. Utilities counter that the attachers’ position is barred by Section 1.1408(b) of the Commission’s rules, which mandates that new attachers bear the costs of pole replacements necessitated

solely as a result of their new attachments. They also assert that the attachers misstate or misunderstand the process and economics of scheduling a pole for replacement. The record indicates that utilities use internal pole replacement programs to determine when a pole needs to be replaced because it is unsafe, unreliable, or unfit. These programs involve inspections scheduled at periodic intervals during which the condition of a pole is evaluated. If the pole is deemed to be in poor condition or reaching the end of its useful life—a status that utilities emphasize is distinct from a pole’s age—the utility will schedule it for replacement. The timing of that replacement appears to vary based on the provisions of a particular utility’s replacement program, but a pole that is deteriorating but still safe and serviceable may not be scheduled for replacement for a period of years after the inspection. For example, the POWER Coalition explains that its members conduct their inspections at 8–10 year cycles and that if it is determined that a pole is not likely to remain serviceable until the next cycle (*i.e.*, for another 8–10 years), it will be replaced in one to two years. Utilities argue that when those pole replacements are accelerated to create capacity for new attachments, they lose the value of their capital asset that is being retired before it has reached the end of its useful life. For these reasons, utilities dispute that they obtain a benefit when a pole is replaced before the end of its useful life. Rather, they argue that requiring a new attacher to pay the costs of the pole replacement ensures that utilities are compensated for, among other things, the lost value of an asset that would otherwise remain in service for years. Some utilities have also indicated that state-level oversight of their capital budgets and spending cycles limits their flexibility to assume increased capital expenditures in a given year to accommodate communications deployments.

23. We seek additional information and documents that will better substantiate the economic, legal, and practical implications of potentially revising our rules governing cost sharing. We are particularly interested in additional information and analyses that expand the economic arguments made by utilities and attachers, including those addressing their respective economic incentives and how our rules do or do not effectively align them. We recognize that our current cost sharing rules have been interpreted to shift the financial responsibility of

utilities for maintaining and replacing their capital assets to attachers, and that this shift inflates attachers’ pole attachment costs. We also recognize that the ability of utilities to deny access to their poles due to insufficient capacity, together with the substantial cost to attachers having to deploy underground infrastructure in lieu of an attachment, potentially confers significant leverage to utilities that may disadvantage attachers in negotiations to obtain what they believe is an equitable allocation of pole replacement costs. Utilities counter that if they are prevented from fully realizing the value of their infrastructure assets when a new attachment request requires the early retirement of an otherwise serviceable pole, there is little incentive for them to approve the request.

24. We seek comment on whether revising our pole attachment rules to require utilities to pay some portion of the costs of replacing a pole that is necessitated solely to accommodate a new attachment would better align the economic incentives of the parties, or whether it would, as some utilities suggest, simply incent utilities to deny access to the pole in this circumstance. If we were to revise our rules on this point, what standards or formula should be used to apportion the costs between the utility, the new attacher, and any other existing attachers? Should we adopt NCTA’s suggestion that new attachers be responsible for the remaining net book value of the pole being replaced, measured by the average depreciated bare pole investment derived using the Commission’s pole attachment rate formula? If we were to adopt that standard, what, if any, additional costs would need to be allocated to the new and/or existing attachers to ensure that utilities are compensated for the costs of attachments to their poles? What, if any, impact would the standard proposed by NCTA have on pole attachment rates, costs borne by existing attachers other than the utilities, and utility ratepayers? The Electric Utilities argue that shifting some of the cost of pole replacements to utilities “would actually discriminate against existing attachers that have already paid the actual cost of make-ready necessary to accommodate their attachments.” According to Electric Utilities “[i]f electric utilities are bearing the vast majority of make-ready pole replacement costs, then those costs will be booked to the appropriate capital and O&M accounts (principally FERC Accounts 364 and 593), which will, in turn, lead to an increase in pole attachment rates paid by all attaching

entities subject to the FCC's formulas." Is there a different standard of cost allocation that would better balance the incentives of the parties, be administratively simple to apply, and be more amenable to utilities? Have states that regulate pole attachments adopted rules specifying how to allocate the upfront cost to replace a pole between utilities and attachers that the Commission should consider adopting or modifying for its own use?

25. We also seek comment on the relationship between the upfront costs incurred to replace a pole versus the recovery of pole replacement costs through recurring pole attachment rates. Specifically, would it be more efficient and effective to require all costs incurred to replace a pole (except where a pole replacement is solely necessitated by a new attachment) to be recovered over time through the allowance for depreciation reflected in recurring rates calculated pursuant to the Commission's pole attachment rate formulas, rather than upfront through make-ready fees? Would the utility be made whole for early replacement of a structurally sound pole through the allowance for depreciation expense reflected in recurring pole rental rates, given the use of accurate depreciation rates? Do utilities use group depreciation for poles? Do utilities' pole depreciation rates equally reflect the probability of late pole replacement, relative to average expected useful life, and the probability of early replacement, whether caused by the addition of an attachment or by some other reason? Under this approach, would the allowance reflected in recurring pole attachment rates through the application of the rate of return component of the carrying charge rate to the net cost of a bare pole, as in the Commission's rate formula, fully compensate the utility for the cost of capital used to finance the remaining undepreciated cost of a replacement pole? Pole replacement costs (other than for pole replacements solely necessitated by a new attachment) under this approach would be allocated in the same way that capital, maintenance, and administrative costs are allocated under the Commission's recurring pole attachment rate formulas. Would this approach reduce barriers to entry and at the same time send efficient pricing signals for pole investment and broadband deployment? Would this approach reduce cost allocation and rate disputes related to pole replacement? Could such an approach be used for recovery of all upfront pole replacement costs, regardless of the reason for

replacement? What are the advantages and disadvantages of such an approach?

26. If we were to adopt a standard for allocating the costs of a pole replacement precipitated by a new attachment between utility and attachers, should utilities be able to contest that the allocation is sufficiently compensatory during negotiations with attachers and, if necessary, in complaint proceedings at the Commission, and what showing would be required for them to do so?

27. To help us understand the scale of the pole replacement costs at issue, we seek data from attachers for a broad sample of recent, large broadband network buildouts showing the total number of poles to which they attached and, of those poles, the number for which they paid the full cost to replace an existing pole. For each project identified, we ask that attachers specify the total non-recurring costs of the project (*i.e.*, costs for the physical material of the poles and any and all other assets, such as fiber and electronic equipment, and labor costs for design, engineering, and construction of the network) and the total non-recurring cost specifically for replacement poles. We ask that attachers and utilities provide information concerning the condition of the poles that were replaced and their status within the utility's pole inspection and replacement program, including any available information concerning the term of the pole's useful life. We also request that utilities provide data from their year-end 2021 accounts showing: (1) Gross pole investment; (2) accumulated pole depreciation expense; (3) accumulated deferred income taxes attributable to poles; (4) net pole investment (*i.e.*, gross pole investment minus accumulated depreciation expense minus accumulated deferred income taxes, a result that is equivalent to the net cost of a bare pole under the Commission's pole attachment formulas); and (5) pole investment excluded from gross pole investment (to avoid double recovery of the same pole costs through the collection of both non-recurring make-ready and recurring rental fees).

28. We seek comment on whether revising our cost sharing rules to recognize that utilities directly benefit from pole replacements needed to create capacity for new attachments and should pay a proportional share of those costs would have a positive or negative impact on the negotiation of pole attachment agreements and broadband deployment. As the Commission has previously recognized, Section 224 of the Act does not authorize us to

mandate that utilities replace poles to create capacity for new attachments. We ask that commenters supporting or recommending specific cost allocation methodologies address why their favored solution will expedite pole attachment approvals without increasing denials, benefit consumers by connecting more people to broadband, and otherwise be in the public interest. We also seek comment on whether there are constraints on a utility's ability to deny attachment based on lack of capacity, such as the nondiscrimination requirement in Section 224(f)(2) of the Act. For instance, if a utility itself provides broadband, would it be discriminatory to deny attachment to another broadband provider based on lack of capacity?

### *C. Avoiding and Resolving Disputes Between Utilities and Attachers*

29. In addition to the questions above, we seek comment on additional measures that the Commission could adopt that would enable attachers and utilities to avoid pole replacement disputes and/or quickly resolve them when they occur. For instance, ExteNet argues that the Commission should require utilities to provide potential attachers with information concerning the condition of, and replacement plans for, their poles. Would disputes concerning the need for pole replacements and associated costs be avoided if attachers had access to such information when planning their deployments? What specific data points would utilities need to provide potential attachers for such disputes to be avoided? What mechanism could utilities use to provide such information to attachers if required to do so (*e.g.*, an internal utility database) and what costs would be associated with establishing the mechanism(s)? Does the Commission have jurisdiction to require utilities to provide potential attachers with information concerning the status of their poles? Are there any other revisions or additions that the Commission can make to its rules that would enable parties to avoid disputes concerning pole replacements or facilitate the private resolution of those disputes? Beyond the topic of pole replacements, are there other recurring issues with the pole attachment process that hinder the ability of broadband providers to deploy new facilities? Are there other infrastructure-related barriers that broadband providers are facing in their efforts to quickly deploy broadband? What steps should the Commission take to address these and other problems that may arise, and to accelerate their resolution?

30. When pole replacement disputes cannot be avoided or resolved privately by the parties, are there additional procedures the Commission should adopt to expedite the resolution of pole attachment complaints? In November 2017, the Commission established a 180-day shot clock for the Enforcement Bureau to resolve pole access complaints. NCTA argues that the Commission should take the additional step of announcing policies favoring the placement of pole attachment complaints arising in unserved areas on the Accelerated Docket, which requires that proceedings on a complaint be concluded within 60 days. We seek comment on whether such a step is necessary given the 180-day shot clock for pole access complaints and the discretion already afforded to Commission staff to place a complaint on the Accelerated Docket if they deem it suitable. We seek comment on the specific criteria the Commission would include in a policy that would guide Commission staff on when pole attachment complaints should be placed on the Accelerated Docket. For example, should the Commission's policy take into account the number and complexity of the claims, need for discovery, need for expert affidavits, and ability of the parties to stipulate to facts? If the Commission were to adopt a policy that favors including pole attachment complaints on the Accelerated Docket, should it be limited to complaints that raise only discrete pole access issues and do not require the Commission to consider whether a rate, term, or condition of attachment is unjust or unreasonable? We also seek comment on any other procedural mechanisms that would expedite the resolution of complaints before the Commission concerning pole replacements. We also seek comment on whether there is additional clarity the Commission can provide on the scope of refunds available under the Commission's existing rules governing pole attachment complaints.

31. The Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity,

inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

## II. Initial Regulatory Flexibility Analysis

32. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities from the policies and rule changes proposed in this *Second Further Notice*. The Commission requests written public comment on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice*. The Commission will send a copy of the *Second Further Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Second Further Notice* and IRFA (or summaries thereof) will be published in the **Federal Register**.

### A. Need for, and Objectives of, the Proposed Rule Changes

33. The *Second Further Notice* seeks comment on ways to eliminate or expedite the resolution of pole replacement disputes by establishing clear standards for when and how the cost causation and cost sharing requirements in Section 1.1408(b) of the Commission's rules apply to pole replacements. The *Second Further Notice* specifically seeks comment on situations in which a pole replacement is not "necessitated solely" by a new attachment request, whether and to what extent utilities directly benefit from various types of pole replacements, and if the Commission should establish standards for when utilities should be required to pay a proportional share of pole replacement costs. Additionally, the *Second Further Notice* seeks comment on whether the Commission should adopt an express presumption with regard to whether utilities directly benefit when they use pole replacements precipitated by attachment requests to upgrade or enhance their poles, as well as whether the Commission has previously embraced or rejected such a presumption. Comments are also sought regarding the circumstances in which such a presumption would apply, how relevant costs would be allocated, and whether this presumption would positively or negatively impact pole attachment negotiations and, relatedly, broadband deployment.

34. The *Second Further Notice* also seeks comment on the costs and benefits of early pole retirements. Specifically, when retiring a pole early to accommodate a new attachment, the *Second Further Notice* seeks comment on whether a revision of the Commission's pole attachment rules to require utilities to pay a portion of the costs of the pole replacement would help to align parties' economic incentives. The *Second Further Notice* seeks comment on whether it would be more efficient and effective to require all costs incurred to replace a structurally sound pole for reasons other than insufficient capacity to be recovered over time through the allowance for depreciation reflected in recurring rates calculated pursuant to the Commission's pole attachment rate formulas, rather than upfront through make-ready fees. It also seeks comment on whether a revision of the Commission's cost sharing rules to recognize that utilities directly benefit from pole replacements that create capacity for new attachments and should thus pay a proportional share of the costs would positively or negatively affect negotiations of pole attachment agreements and broadband deployment. The *Second Further Notice* seeks comment on whether the Commission should explicitly define certain key terms related to pole replacements and the rules governing them, including "necessitated solely" and "red-tagged." Finally, the *Second Further Notice* seeks comment on measures the Commission could adopt to avoid disputes concerning pole replacements and expedite the resolution of complaints concerning pole replacements and provide more clarity with respect to the scope of refunds and payments that may be ordered if the Commission determines that a pole attachment rate, term, or condition is unjust and unreasonable.

### B. Legal Basis

35. The proposed action is authorized under Sections 1–4, 201, 202, 214, 224, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–54, 201, 202, 214, 224, 251, and 303(r).

### C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

36. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small

organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.” A “small-business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

37. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 32.5 million businesses.

38. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

39. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we

estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

40. *Wired Broadband Internet Access Service Providers. (Wired ISPs).* Providers of wired broadband internet access service include various types of providers except dial-up internet access providers. Wireline service that terminates at an end user location or mobile device and enables the end user to receive information from and/or send information to the internet at information transfer rates exceeding 200 kilobits per second (kbps) in at least one direction is classified as a broadband connection under the Commission’s rules. Wired broadband internet services fall in the Wired Telecommunications Carriers industry. The SBA small business size standard for this industry classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, according to Commission data on internet access services as of December 31, 2018, nationwide there were approximately 2,700 providers of connections over 200 kbps in at least one direction using various wireline technologies. The Commission does not collect data on the number of employees for providers of these services, therefore, at this time we are not able to estimate the number of providers that would qualify as small under the SBA’s small business size standard. However, in light of the general data on fixed technology service providers in the Commission’s 2020 Communications Marketplace Report, we believe that the majority of wireline internet access service providers can be considered small entities.

41. *Internet Service Providers (Non-Broadband).* Internet access service providers using client-supplied telecommunications connections (e.g., dial-up ISPs) as well as VoIP service providers using client-supplied telecommunications connections fall in the industry classification of All Other Telecommunications. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. For this industry, U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Consequently, under the SBA size standard a majority of firms in this industry can be considered small.

42. *Wired Telecommunications Carriers.* The U.S. Census Bureau

defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

43. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA’s small business size standard, most of these providers can be considered small entities.

44. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include both incumbent and competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on

Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were fixed local exchange service providers. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

45. *Incumbent Local Exchange Carriers (Incumbent LECs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

46. *Competitive Local Exchange Carriers (LECs)*. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the

Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

47. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

48. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with an SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 32 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 32 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

49. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the

categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with an SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

50. The broadband internet access service provider category covered by these new rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband internet access service, the actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

51. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer

than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

52. *Wireless Communications Services.* Wireless Communications Services (WCS) can be used for a variety of fixed, mobile, radiolocation, and digital audio broadcasting satellite services. Wireless spectrum is made available and licensed for the provision of wireless communications services in several frequency bands subject to Part 27 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

53. The Commission's small business size standards with respect to WCS involve eligibility for bidding credits and installment payments in the auction of licenses for the various frequency bands included in WCS. When bidding credits are adopted for the auction of licenses in WCS frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in the designated entities section in Part 27 of the Commission's rules for the specific WCS frequency bands.

54. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission

does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

55. *1670–1675 MHz Services.* These wireless communications services can be used for fixed and mobile uses, except aeronautical mobile. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

56. According to Commission data as of November 2021, there were three active licenses in this service. The Commission's small business size standards with respect to 1670–1675 MHz Services involve eligibility for bidding credits and installment payments in the auction of licenses for these services. For licenses in the 1670–1675 MHz service band, a “small business” is defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” is defined as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. The 1670–1675 MHz service band auction's winning bidder did not claim small business status.

57. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

58. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable industry with an SBA small business size standard is Wireless Telecommunications Carriers (except Satellite). The size standard for this industry under SBA rules is that a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 407 providers that reported they were engaged in the provision of cellular, personal communications services, and specialized mobile radio services. Of these providers, the Commission estimates that 333 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

59. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum encompasses services in the 1850–1910 and 1930–1990 MHz bands. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

60. Based on Commission data as of November 2021, there were approximately 5,060 active licenses in the Broadband PCS service. The Commission's small business size standards with respect to Broadband PCS involve eligibility for bidding credits and installment payments in the auction of licenses for these services. In auctions for these licenses, the Commission defined “small business” as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a “very small business” as an entity that, together with its affiliates and controlling interests, has had

average annual gross revenues not exceeding \$15 million for the preceding three years. Winning bidders claiming small business credits won Broadband PCS licenses in C, D, E, and F Blocks.

61. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

62. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of \$40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than \$15 million for the preceding three calendar years. These standards, defining "small entity" in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40% of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

63. *Specialized Mobile Radio Licenses.* Special Mobile Radio (SMR) licenses allow licensees to provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz spectrum bands on

a commercial basis including but not limited to services used for voice and data communications, paging, and facsimile services, to individuals, Federal Government entities, and other entities licensed under Part 90 of the Commission's rules. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 119 providers that reported they were of SMR (dispatch) providers. Of this number, the Commission estimates that all 119 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, these 119 SMR licensees can be considered small entities.

64. Based on Commission data as of December 2021, there were 3,924 active SMR licenses. However, since the Commission does not collect data on the number of employees for licensees providing SMR services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard. Nevertheless, for purposes of this analysis the Commission estimates that the majority of SMR licensees can be considered small entities using the SBA's small business size standard.

65. *Lower 700 MHz Band Licenses.* The lower 700 MHz band encompasses spectrum in the 698–746 MHz frequency bands. Permissible operations in these bands include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated

in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

66. According to Commission data as of December 2021, there were approximately 2,824 active Lower 700 MHz Band licenses. The Commission's small business size standards with respect to Lower 700 MHz Band licensees involve eligibility for bidding credits and installment payments in the auction of licenses. For auctions of Lower 700 MHz Band licenses the Commission adopted criteria for three groups of small businesses. A very small business was defined as an entity that, together with its affiliates and controlling interests, has average annual gross revenues not exceeding \$15 million for the preceding three years, a small business was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and an entrepreneur was defined as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. In auctions for Lower 700 MHz Band licenses seventy-two winning bidders claiming a small business classification won 329 licenses, twenty-six winning bidders claiming a small business classification won 214 licenses, and three winning bidders claiming a small business classification won all five auctioned licenses.

67. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

68. *Upper 700 MHz Band Licenses.* The upper 700 MHz band encompasses spectrum in the 746–806 MHz bands. Upper 700 MHz D Block licenses are nationwide licenses associated with the 758–763 MHz and 788–793 MHz bands. Permissible operations in these bands

include flexible fixed, mobile, and broadcast uses, including mobile and other digital new broadcast operation; fixed and mobile wireless commercial services (including FDD- and TDD-based services); as well as fixed and mobile wireless uses for private, internal radio needs, two-way interactive, cellular, and mobile television broadcasting services. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to licenses providing services in these bands. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Thus, under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

69. According to Commission data as of December 2021, there were approximately 152 active Upper 700 MHz Band licenses. The Commission's small business size standards with respect to Upper 700 MHz Band licenses involve eligibility for bidding credits and installment payments in the auction of licenses. For the auction of these licenses, the Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years. Pursuant to these definitions, three winning bidders claiming very small business status won five of the twelve available licenses.

70. *Air-Ground Radiotelephone Service.* Air-Ground Radiotelephone Service is a wireless service in which licensees are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft. A licensee may provide any type of air-ground service (*i.e.*, voice telephony, broadband internet, data, etc.) to aircraft of any type, and serve any or all aviation markets (commercial, government, and general). A licensee must provide service to aircraft and may not provide ancillary land mobile or fixed services in the 800 MHz air-ground spectrum.

71. The closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size

standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

72. Based on Commission data as of December 2021, there were approximately four licensees with 110 active licenses in the Air-Ground Radiotelephone Service. The Commission's small business size standards with respect to Air-Ground Radiotelephone Service involve eligibility for bidding credits and installment payments in the auction of licenses. For purposes of auctions, the Commission defined "small business" as an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$40 million for the preceding three years, and a "very small business" as an entity that, together with its affiliates and controlling interests, has had average annual gross revenues not exceeding \$15 million for the preceding three years. In the auction of Air-Ground Radiotelephone Service licenses in the 800 MHz band, neither of the two winning bidders claimed small business status.

73. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, the Commission does not collect data on the number of employees for licensees providing these services therefore, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

74. *3650–3700 MHz band.* Wireless broadband service licensing in the 3650–3700 MHz band provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.*, 3650–3700 MHz). Licensees are permitted to provide services on a non-common carrier and/or on a common carrier basis. Wireless broadband services in the 3650–3700 MHz band fall in the Wireless

Telecommunications Carriers (except Satellite) industry with an SBA small business size standard that classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

75. The Commission has not developed a small business size standard applicable to 3650–3700 MHz band licensees. Based on the licenses that have been granted, however, we estimate that the majority of licensees in this service are small internet Access Service Providers (ISPs). As of November 2021, Commission data shows that there were 902 active licenses in the 3650–3700 MHz band. However, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

76. *Fixed Microwave Services.* Fixed microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Upper Microwave Flexible Use Service (UMFUS), Millimeter Wave Service (70/80/90 GHz), Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), 24 GHz Service, Multiple Address Systems (MAS), and Multichannel Video Distribution and Data Service (MVDDS), where in some bands licensees can choose between common carrier and non-common carrier status. Wireless Telecommunications Carriers (except Satellite) is the closest industry with an SBA small business size standard applicable to these services. The SBA small size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of fixed microwave service licensees can be considered small.

77. The Commission's small business size standards with respect to fixed microwave services involve eligibility for bidding credits and installment payments in the auction of licenses for

the various frequency bands included in fixed microwave services. When bidding credits are adopted for the auction of licenses in fixed microwave services frequency bands, such credits may be available to several types of small businesses based average gross revenues (small, very small and entrepreneur) pursuant to the competitive bidding rules adopted in conjunction with the requirements for the auction and/or as identified in Part 101 of the Commission's rules for the specific fixed microwave services frequency bands.

78. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

79. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). Wireless cable operators that use spectrum in the BRS often supplemented with leased channels from the EBS, provide a competitive alternative to wired cable and other multichannel video programming distributors. Wireless cable programming to subscribers resembles cable television, but instead of coaxial cable, wireless cable uses microwave channels.

80. In light of the use of wireless frequencies by BRS and EBS services, the closest industry with an SBA small business size standard applicable to these services is Wireless Telecommunications Carriers (except Satellite). The SBA small business size standard for this industry classifies a

business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated in this industry for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Thus under the SBA size standard, the Commission estimates that a majority of licensees in this industry can be considered small.

81. According to Commission data as of December 2021, there were approximately 5,869 active BRS and EBS licenses. The Commission's small business size standards with respect to BRS involves eligibility for bidding credits and installment payments in the auction of licenses for these services. For the auction of BRS licenses, the Commission adopted criteria for three groups of small businesses. A very small business is an entity that, together with its affiliates and controlling interests, has average annual gross revenues exceed \$3 million and did not exceed \$15 million for the preceding three years, a small business is an entity that, together with its affiliates and controlling interests, has average gross revenues exceed \$15 million and did not exceed \$40 million for the preceding three years, and an entrepreneur is an entity that, together with its affiliates and controlling interests, has average gross revenues not exceeding \$3 million for the preceding three years. Of the ten winning bidders for BRS licenses, two bidders claiming the small business status won 4 licenses, one bidder claiming the very small business status won three licenses and two bidders claiming entrepreneur status won six licenses. One of the winning bidders claiming a small business status classification in the BRS license auction has an active licenses as of December 2021.

82. The Commission's small business size standards for EBS define a small business as an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$55 million for the preceding five (5) years, and a very small business is an entity that, together with its affiliates, its controlling interests and the affiliates of its controlling interests, has average gross revenues that are not more than \$20 million for the preceding five (5) years. In frequency bands where licenses were subject to auction, the Commission notes that as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Further, the Commission does not generally track

subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated. Additionally, since the Commission does not collect data on the number of employees for licensees providing these services, at this time we are not able to estimate the number of licensees with active licenses that would qualify as small under the SBA's small business size standard.

83. *Satellite Telecommunications.* This industry comprises firms "primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with \$35 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than \$25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently using the SBA's small business size standard, a little more than of these providers can be considered small entities.

84. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g. dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there

were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of “All Other Telecommunications” firms can be considered small.

85. Because Section 706 of the Act requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

86. *Cable and Other Subscription Programming.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g., limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA small business size standard for this industry classifies firms with annual receipts less than \$41.5 million as small. Based on U.S. Census Bureau data for 2017, 378 firms operated in this industry during that year. Of that number, 149 firms operated with revenue of less than \$25 million a year and 44 firms operated with revenue of \$25 million or more. Based on this data, the Commission estimates that a majority of firms in this industry are small.

87. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers nationwide. Based on available data, as of December 2020, there were approximately 45,308,192 basic cable video subscribers in the top Cable MSOs in the United States. Only five cable operators serving cable video subscribers in the top Cable MSOs had more than 400,000 subscribers. Accordingly, the Commission estimates that the majority of cable operators are small.

88. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for small cable system

operators, which classifies “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000,” as small. As of December 2020, there were approximately 45,308,192 basic cable video subscribers in the top Cable MSOs in the United States. Accordingly, an operator serving fewer than 453,082 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, all but five of the cable operators in the Top Cable MSOs have less than 453,082 subscribers and can be considered small entities under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

89. *Electric Power Generators, Transmitters, and Distributors.* The U.S. Census Bureau defines the utilities sector industry as comprised of “establishments, primarily engaged in generating, transmitting, and/or distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Operate generation facilities that produce electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.” This industry group is categorized based on fuel source and includes Hydroelectric Power Generation, Fossil Fuel Electric Power Generation, Nuclear Electric Power Generation, Solar Electric Power Generation, Wind Electric Power Generation, Geothermal Electric Power Generation, Biomass Electric Power Generation, Other Electric Power Generation, Electric Bulk Power Transmission and Control and Electric Power Distribution.

90. The SBA has established a small business size standard for each of these groups based on the number of employees which ranges from having

fewer than 250 employees to having fewer than 1,000 employees. U.S. Census Bureau data for 2017 indicate that for the Electric Power Generation, Transmission and Distribution industry there were 1,693 firms that operated in this industry for the entire year. Of this number, 1,552 firms had less than 250 employees. Based on this data and the associated SBA size standards, the majority of firms in this industry can be considered small entities.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

91. The *Second Further Notice* seeks comment on ways to effectively resolve pole replacement disputes through the establishment of standards for when and how utilities and attachers must share in the costs of a pole replacement necessitated by an attachment request. The *Second Further Notice* does not definitively propose any changes to the Commission’s current pole attachment rules, but does request that commenters address the legal implications of any rule revisions they propose, which may include reporting, recordkeeping, and other compliance requirements. For example, the *Second Further Notice* seeks comment on whether the Commission has jurisdiction to require utilities to share information concerning the status of utility poles with attachers and, if so, the mechanism through which such information would be provided.

92. The *Second Further Notice* seeks comment on what situations exist in which a pole replacement is not “necessitated solely” by a new attachment request and whether codifying a definition of this phrase would be helpful for parties seeking to comply with Section 1.1408(b) of the Commission’s rules. With respect to utility benefits, the *Second Further Notice* seeks comment on how to identify and quantify the costs associated with a pole replacement that are proportional to the direct benefit obtained by a utility from a replacement not necessitated solely by a new attachment request. The *Second Further Notice* also seeks comment on whether the Commission should revise its pole attachment rules to recognize that utilities directly benefit from pole replacements caused by new attachment requests and establish clear standards for when utilities should be required to pay a proportional share of pole replacement costs. Further, the *Second Further Notice* seeks comment on whether the Commission should adopt an express presumption that utilities directly benefit when they use pole

replacements precipitated by an attachment request to upgrade or enhance their poles. The Commission then asks how costs should be allocated between utilities and attachers if such a presumption is adopted and whether the Commission should revise its cost sharing rules to require utilities to pay a portion of the costs of replacing a pole to create capacity for new attachments. The Commission also seeks comment on the scope of utility liability for pole attachment rate refunds when rates are found to be unjust and unreasonable. Should commenters provide compelling arguments, some or all of these proposals could be adopted. The guidance and clarity offered by these proposals would lessen the compliance impact on small utilities and attaching entities with regard to pole replacements and pole attachment rate refunds.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

93. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

94. The *Second Further Notice* does not propose specific changes to the Commission's pole attachment rules, but seeks comment on whether the Commission should revise its rules to eliminate and expedite the resolution of pole replacement disputes between utilities and attachers and provide clarity with respect to the pole attachment rate refund liability for utilities. The Commission's objective in requesting this information is to determine whether it can and should establish clear standards for when and how attachers and utilities must share the costs of a pole replacement precipitated by a new attachment request. In considering the cost allocations, the Commission seeks comment on alternatives that might help smaller utilities and attaching entities. For example, it asks that when a pole needs to be replaced both to accommodate a new attachment and to correct a preexisting violation, whether

the new attacher should be responsible for the difference in cost between the taller pole needed for its attachment and what it would cost to replace the existing pole with one of the same type and size. The *Second Further Notice* also seeks comment on what other methods of apportioning costs are available in this situation in an attempt to properly balance this burden on different types of entities. Additionally, the *Second Further Notice* seeks comment on the Commission recognizing an express presumption regarding whether utilities directly benefit when they use pole replacements precipitated by an attachment request to upgrade or enhance their poles. The Commission seeks comment on cost allocation alternatives related to the presumption, were it to be adopted, that could be helpful to smaller attachers and utilities. Specifically, the *Second Further Notice* asks whether the new attacher should be responsible for the difference in cost between a taller pole of the same type as the existing pole and the upgraded pole, along with other typical make-ready costs of a new attachment, or if another measure is more appropriate when specific parties are involved. Notably, at the conclusion of the *Second Further Notice*, the Commission also asks commenters recommending certain cost allocation methodologies to address why their favored solution will expedite pole attachment approvals, benefit consumers, and otherwise be in the public interest. The Commission further seeks comment on the scope of refunds available to attachers when pole attachment rates are found to be unjust and unreasonable. Information submitted in response to these requests for comment will enable the Commission to evaluate the impact that revising its cost sharing and rate refund rules would impact smaller entities.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule*

95. None.

### **III. Procedural Matters**

96. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that

memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR 1.1206(b). In proceedings governed by 47 CFR 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

97. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in the *Second Further Notice*. The text of the IRFA is set forth herein. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of the *Second Further Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

98. *Contact Person.* For further information about this proceeding, contact Michael Ray, FCC, Wireline Competition Bureau, Competition Policy Division, 45 L Street NE, Washington, DC 20554, (202) 418-0357, [Michael.Ray@fcc.gov](mailto:Michael.Ray@fcc.gov).

99. *Paperwork Reduction Act Analysis.* This document contains

proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### IV. Ordering Clauses

100. Accordingly, *it is ordered* that, pursuant to Sections 1–4, 201, and 224 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, and 224, this Second Notice of Proposed Rulemaking *is adopted*.

101. *It is further ordered* that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary.*

[FR Doc. 2022–09029 Filed 4–27–22; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MB Docket No. 22–150; RM–11926; DA 22–403; FRS 82844]

### Television Broadcasting Services Augusta, Maine

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission (Commission or FCC) has before it a petition for rulemaking filed by Maine Public Broadcasting Corporation (Petitioner), the licensee of WCBT, channel \*10, Augusta, Maine. The Petitioner requests the substitution of channel \*20 for channel \*10 at Augusta in the Table of Allotments.

**DATES:** Comments must be filed on or before May 31, 2022 and reply comments on or before June 13, 2022.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 45

L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Derek Teslik, Esq., Gray Miller Persh, 2233 Wisconsin Avenue NW, Washington, DC 20007.

#### FOR FURTHER INFORMATION CONTACT:

Joyce Bernstein, Media Bureau, at (202) 418–1647; or [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov).

#### SUPPLEMENTARY INFORMATION:

In support, the Petitioner states that the proposed channel substitution would serve the public interest, since WCBT is one of only two full power stations in the market to broadcast on a VHF channel, and moving the Station to a UHF channel would improve the community's access to WCBT's Public Broadcasting Service (PBS) and other public television programming by improving indoor reception. According to Petitioner, although the proposed channel \*20 facilities will result in a slight reduction in the Station's predicted population served, much of the predicted loss area is located outside the State of Maine and the vast majority is served by Petitioner's stations WMEB-TV, Orono, Maine, and WMEA-TV, Biddeford, Maine, or by other PBS member stations, WENH-TV, Durham, New Hampshire, WLED-TV, Littleton, New Hampshire, and WVTB, St. Johnsbury, Vermont. Petitioner further states that once terrain-limitations are factored into the analysis, the new loss area that would be created by the proposed substitution would contain 144 persons, which it asserts is well below the level the Commission considers *de minimis* in the context of considering impermissible loss of service. Since the proposed facility is located within the Canadian coordination zone, concurrence from the Canadian government must be obtained for this allotment.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking*, MB Docket No. 22–150; RM–11926; DA 22–403, adopted April 13, 2022, and released April 13, 2022. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any

proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, see 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a). See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

#### Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments under Maine by changing \*10 to \*20 in the entry for Augusta to read as follows:

#### § 73.622 Digital television table of allotments.

\* \* \* \* \*

(j) \* \* \*

Community	Channel No.
* * * *	*
<b>MAINE</b>	
Augusta .....	*20
* * * *	*

[FR Doc. 2022–08607 Filed 4–27–22; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

[Docket No. FWS-R1-ES-2021-0154;  
FF09E22000 FXES1113090FEDR 223]

RIN 1018-BE54

**Endangered and Threatened Wildlife  
and Plants; Removing Nelson's  
Checker-Mallow From the Federal List  
of Endangered and Threatened Plants**

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to remove Nelson's checker-mallow (*Sidalcea nelsoniana*) from the Federal List of Endangered and Threatened Plants. Our review of the best available scientific and commercial data indicates that the threats to Nelson's checker-mallow have been eliminated or reduced to the point that the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to Nelson's checker-mallow. We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring (PDM) plan for Nelson's checker-mallow.

**DATES:** We will accept comments received or postmarked on or before June 27, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by June 13, 2022.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R1-ES-2021-0154, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

*Availability of supporting materials:* This proposed rule and supporting documents, including references cited, the 5-year review, the recovery plan, the species status assessment (SSA) report, and the draft PDM plan, are available at <https://www.regulations.gov> under Docket No. FWS-R1-ES-2021-0154.

**FOR FURTHER INFORMATION CONTACT:** Paul Henson, Project Leader, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266; telephone: 503-231-6179. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not remove Nelson's checker-mallow from the List of Endangered and Threatened Plants (*i.e.*, "delist" the species).

(2) New information on the historical and current status, range, distribution, and population size of Nelson's checker-mallow.

(3) New information on the known and potential threats to Nelson's checker-mallow.

(4) New information regarding the life history, ecology, and habitat of Nelson's checker-mallow.

(5) Current or planned activities within the geographic range of Nelson's checker-mallow that may have adverse or beneficial impacts on the species.

(6) The draft PDM plan for Nelson's checker-mallow.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made "solely on the basis of the best scientific and commercial data available."

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species should remain listed as threatened, or we may conclude that the species should be reclassified from threatened to endangered.

*Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place

of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

### Supporting Documents

A species status assessment (SSA) team prepared an SSA report for Nelson's checker-mallow. The SSA team was composed of Service biologists; the SSA team also consulted with other experts on the species. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our July 1, 1994, peer review policy (59 FR 34270; July 1, 1994), our August 22, 2016, Director's Memo on the Peer Review Process, and the Office of Management and Budget's December 16, 2004, Final Information Quality Bulletin for Peer Review (revised June 2012), we solicited independent scientific reviews of the information contained in Nelson's checker-mallow SSA report. We sent the SSA report to four independent peer reviewers and received no responses. The SSA report was also submitted to our Federal, State, municipal, Tribal, and conservation partners for scientific review. We received review from two partners, representing a Federal agency and a nonprofit conservation partner. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the final SSA report, which is the foundation for this proposed rule.

### Previous Federal Actions

On February 12, 1993, we published in the **Federal Register** (58 FR 8235) a final rule listing Nelson's checker-mallow as a threatened species. We finalized the Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington, which includes Nelson's checker-mallow, in 2010 (Service 2010, entire). We conducted a 5-year status review in 2012 and did not recommend reclassification (Service 2012, entire). On May 7, 2018, we announced in the **Federal Register** (83 FR 20088) our initiation of a subsequent 5-year review for the species. We completed the status review in 2021 and therein recommended delisting the species.

### Proposed Delisting Determination Background

Nelson's checker-mallow is an herbaceous perennial plant in the mallow family (Malvaceae). It produces 30 to 100 lavender to deep-pink flowers, arranged on an elongated, branched stalk. Plants produce short, thick, twisted rhizomes (creeping underground stems), as well as a system of fine roots extending from a taproot (a stout main root) (Service 2010, pp. F-3–F-4).

Nelson's checker-mallow is found in the Willamette Valley and the Coast Range of Oregon and Washington. It occupies a variety of prairie habitats and soil types, but is typically associated with open sites. In the Willamette Valley, the species occasionally occurs in the understory of Oregon ash (*Fraxinus latifolia*) woodlands or among woody shrubs, but more frequently occupies native prairie remnants, including those at the margins of sloughs, ditches, streams, roadsides, fence rows, drainage swales, and fallow fields (Glad et al. 1994, pp. 314–321). In the Coast Range, Nelson's checker-mallow populations typically occur in open, wet to dry meadows, in intermittent stream channels, and along margins of coniferous forests (Glad et al. 1987, pp. 259–262).

Once established, Nelson's checker-mallow plants are hardy; if plants become established at a site, they usually persist (Bartow 2020, pers. comm.). Their long taproot allows them to access subsurface water sources, and individual plants are long-lived (Dillon 2021, pers. comm.). In addition, regeneration from the taproot is possible after the above-ground and upper taproot portions of the plant have been removed (Dillon 2021, pers. comm.).

A thorough review of the taxonomy, life history, and ecology of Nelson's checker-mallow is presented in the SSA report, version 1.0 (Service 2021, entire).

### Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the Act's definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington (recovery plan) divides the geographic area covered by included species into recovery zones, which provides a framework for recovering the species' historical ranges. Nelson's checker-mallow historically occupied seven recovery zones: SW Washington, Portland, Coast Range, Salem East, Salem West, Corvallis East, and Corvallis West. The following discussion provides an assessment of the species' status relative to the five delisting criteria outlined in the recovery plan.

**Delisting Criterion 1: Distribution and Abundance**

The recovery plan specifies that the distribution of populations should reflect the extent of the species' historical geographic distribution to the extent practicable and identifies goals for a minimum number of populations and target number of plants per recovery zone, as follows: 5,000 plants in one population in the Portland recovery zone; 10,000 plants in two populations in the SW Washington, Salem East, and Corvallis East recovery zones; 15,000 plants in three populations in the Coast Range recovery zone; and 20,000 plants in four populations in the Salem West and Corvallis West recovery zones. The recovery plan further specifies that, with the exception of the Portland recovery zone, these targets may be achieved with a combination of at least two populations that number at least 2,000 individuals; and scattered independent populations must number at least 200 individuals. The rangewide delisting goal is 100,000 plants occurring in 20 populations.

Currently, a total of 334,968 individual plants are distributed across the historical range of the species. Considering only sites that meet the minimum threshold of 200 individuals required to be considered an independent population, there are 332,935 individual plants, found in 42 populations and distributed across six of the seven recovery zones.

Two recovery zones, Corvallis West and Salem West, meet both the abundance and distribution goals outlined in the recovery plan. Collectively, these two recovery zones contain 71 percent of the populations (30 populations) and 95 percent of the individual plants (313,662 plants) known to exist. A third zone, Salem East, contains 9,519 plants, occurring in three populations, essentially meeting the distribution and abundance goals of 10,000 plants distributed among two populations. Three of the remaining zones, Coast Range, Portland, and SW Washington, have the minimum number of populations but do not meet the recovery goals for abundance. The remaining zone, Corvallis East, does not have any populations that meet the minimum population threshold of 200 individual plants.

Rangewide, the abundance and distribution goal of 100,000 plants in 20 populations has been exceeded. Although the plants and populations are not distributed among recovery zones precisely as identified in the recovery plan, they are relatively well distributed throughout the historical range of the

species. Therefore, we conclude that the intent of this criterion, which is to minimize extinction risk by ensuring a sufficient number and distribution of plants and populations, has been satisfied.

**Delisting Criterion 2: Population Trend and Evidence of Reproduction**

The recovery plan notes that the number of individuals in the population (or area of foliar cover) shall have been stable or increasing over a period of at least 15 years. Stable does not mean that the population size is static over time; over a period of 15 years, the number of individuals in the population may exhibit natural year-to-year variability, but the trend must not be declining. Populations must show evidence of reproduction by seed set or presence of seedlings.

Tracking trends for individual Nelson's checker-mallow sites and populations over time is confounded by irregular surveys and varying methodologies. However, the overall abundance of Nelson's checker-mallow has increased markedly since listing. Rangewide, the number of populations with greater than 200 plants, and the total number of plants, continues to increase. In addition, more sites have a large number of individuals than at the time of listing. At the time of listing in 1993, 19 sites had more than 100 plants, and only 5 sites had more than 1,000 plants. In 2012, 26 sites had more than 100 plants, and 4 had over 1,000 plants (Service 2012, pp. 17–19). Currently, 28 sites have more than 100 plants, and 24 sites have more than 1,000 plants (Service 2021, p. 18). These data indicate an overall positive trend since the time of listing, as well as since the 2012 5-year review. Additionally, natural reproduction is occurring on most sites and overall abundance is increasing throughout the recovery zones. Given that the number of individual plants and the number of large populations continue to demonstrate a positive trend, we conclude that this criterion has been met.

**Delisting Criterion 3: Habitat Quality and Management**

The recovery plan specifies that sites supporting populations of Nelson's checker-mallow must meet three criteria related to habitat quality and management:

1. **Prairie quality.** Sites supporting populations of Nelson's checker-mallow must be managed for high-quality prairie habitat, which consists of a diversity of native, non-woody plant species; low frequency of aggressive,

nonnative plant species and encroaching woody species; and essential habitat elements for native pollinators.

2. **Security of habitat.** A substantial portion of the habitat for the populations should either be owned or managed by a government agency or private conservation organization that identifies maintenance of the species and the prairie ecosystem upon which it depends as the primary management objective for the site, or the site must be protected by a permanent or long-term conservation easement or covenant that commits present and future landowners to the conservation of the species.

3. **Management, monitoring, and control of threats.** Each population must be managed appropriately to ensure the maintenance or restoration of quality prairie habitat and to control threats to the species. Use of herbicides, mowing, burning, or livestock grazing in management should be implemented with appropriate methods and timing to avoid impacts to listed plant species. Management should be coordinated with adjacent landowners to minimize effects of pesticide drift, changes in hydrology, timber harvest, or road/utility maintenance. Species that may hybridize with Nelson's checker-mallow should be managed as appropriate to avoid contact with these taxa. Other potential threats relating to scientific research, overcollection, vandalism, recreational impacts, or natural herbivory/parasitism should be successfully managed so as not to significantly impair recovery of the species. Management and monitoring plans must be approved by the Service and should include standardized monitoring and performance criteria that will be used to assess the plans' effectiveness following implementation and to allow for adaptive management, as necessary. Management plans should include a focus on protecting habitat heterogeneity within protected sites and across a range of elevations and aspects to buffer the potential effects of climate change.

We can gauge the degree to which this criterion has been met by considering the management and ownership of sites that contain Nelson's checker-mallow. Of sites that have greater than 200 plants and, therefore, meet the definition of an independent population, 38 have formal management plans that address habitat quality and threats. Similarly, 26 populations are in public ownership and thus are considered protected; one additional site is owned and protected by a nongovernmental conservation organization, while 11 privately owned

sites are protected by conservation easements. Four Nelson's checker-mallow sites have no protection and lack management plans. Together, these four sites account for less than 1 percent of the total number of Nelson's checker-mallow plants. That a majority of sites known to support Nelson's checker-mallow are managed in accordance with a formal management plan and are protected by virtue of ownership or conservation easement ameliorates concerns associated with the quality, security, and threat to prairie habitat. Therefore, we conclude that this recovery criterion has been met.

#### Delisting Criterion 4: Genetic Material Is Stored in a Facility Approved by the Center for Plant Conservation

The recovery plan specifies that stored genetic material in the form of seeds must represent the species' geographic distribution and genetic diversity through collections across the full range of the species. Collections from large populations are particularly important as reservoirs of genetic variability within the species.

Nelson's checker-mallow seeds are currently stored at four separate repositories. The majority of stored seeds are located at the Corvallis Plant Materials Center (PMC) operated by the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) in Corvallis, Oregon. Approximately 408 kilograms (900 pounds) of seeds, or about 112,500,000 seeds, are stored at this facility. Seeds in this collection were sourced primarily from production fields, which are maintained specifically to produce seed, and are used for habitat restoration, population augmentation, and out-planting throughout the range of the species. In addition, approximately 29,000 seeds are stored at the Rae Selling Berry Seed Bank at Portland State University in Portland, Oregon. This collection was sourced from Lane, Linn, Benton, Marion, Polk, Yamhill, and Tillamook Counties in Oregon, and Lewis County in Washington. A third, smaller collection of Nelson's checker-mallow seeds is held at the Miller Seed Vault, at the University of Washington's Botanical Gardens in Seattle, Washington. Approximately 705 seeds from locations in Washington are stored there. In addition to storage in these three regional repositories, a subset of seed from the Rae Selling Berry Seed Bank and the Miller Seed Vault has been sent to the National Laboratory for Genetic Resource Preservation at Colorado State University in Fort Collins, Colorado. Both the Rae Selling

Berry Seed Bank and Colorado State University facility are certified by the Center for Plant Conservation. Collectively, stored seed represents the geographic range of Nelson's checker-mallow, and part of this stored seed is in Center for Plant Conservation-certified facilities. Therefore, we conclude that this criterion has been met.

#### Delisting Criterion 5: Post-Delisting Monitoring Plans and Agreements to Continue Post-Delisting Monitoring Are in Place and Ready for Implementation at the Time of Delisting

The recovery plan specifies that monitoring of populations following delisting will verify the ongoing recovery of the species, provide a basis for determining whether the species should be again placed under the protection of the Act, and provide a means of assessing the continuing effectiveness of management actions.

A draft PDM plan for Nelson's checker-mallow has been developed that outlines an approach to monitoring Nelson's checker-mallow for a period of 6 years after the species is delisted. It addresses the current status of the species and provides details associated with monitoring methods and implementation, including site selection, data analysis, monitoring schedules, and reporting expectations. It also describes potential outcomes in the context of how secure the species remains after delisting. In addition, the draft PDM plan outlines roles and responsibilities and estimates associated costs. The draft PDM plan is available at Docket No. FWS-R1-ES-2021-0154 on <https://www.regulations.gov> for review and comment (see **ADDRESSES**).

#### Regulatory and Analytical Framework *Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in delisting a species (50 CFR 424.11(c) and (e)).

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species’ responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. “Reliable” does not mean “certain”; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species’ likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species’ biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

#### *Analytical Framework*

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for removal from the List of Endangered and Threatened Plants (“delisted”). However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R1–ES–2021–0154 on <https://www.regulations.gov>.

To assess Nelson’s checker-mallow viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events

(for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species’ ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species’ viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the species’ life-history needs. The next stage involved an assessment of the historical and current condition of the species’ demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species’ responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

#### **Summary of Biological Status and Threats**

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species’ current and future condition, in order to assess the species’ overall viability and the risks to that viability.

#### *Ecological Needs*

Populations of Nelson’s checker-mallow usually occupy open habitats that are free from encroachment of trees and shrubs. In the absence of disturbance to set back succession, prairie habitat is subject to woody species encroachment, gradually transitioning into shrub or woodland habitat. Periodic disturbance, such as fire or fall mowing, are necessary to maintain the open, high-light prairie habitats that Nelson’s checker-mallow populations thrive in. Resilient Nelson’s checker-mallow populations need a sufficient number of individuals to withstand stochastic events and disturbances. The minimum viable population size for Nelson’s checker-mallow is not identified. However, the Recovery Plan specifies that

independent populations should number at least 200 individuals (Service 2010, pp. IV–20) which provides a basis for evaluating population status.

For Nelson’s checker-mallow to be considered viable, the species must be able to withstand catastrophic events and adapt to environmental changes. This can be achieved with a sufficient number of resilient populations distributed across its geographic range and representing the range of ecological settings in which the species is known to exist. The minimum number of populations required for Nelson’s checker-mallow has not been determined. However, distribution and abundance goals laid out in the Recovery Plan (Service 2010, pp. IV–35–IV–36) and described in the *Recovery Criteria* section, above, provide a benchmark for evaluating the species.

#### *Factors Influencing the Species*

At the time of listing in 1993, the primary threats to Nelson’s checker-mallow were habitat loss due to land-use conversion for agriculture, competition from invasive plants, and roadside management activities. Other factors identified as potentially affecting prairie habitat were woody encroachment, hydrological alteration, recreational use, and trampling. Planned construction and expansion of a reservoir on Walker Creek (a tributary to the Nestucca River) was identified as a future threat as associated inundation would result in the loss of many plants, including the largest population of the species known to exist at the time. The listing rule (58 FR 8235; February 12, 1993) also noted the potentially negative effects of overcollection for scientific and horticultural purposes, predation by weevils, and small population size; some inadequacies in regulatory mechanisms were also identified. Subsequent to listing, climate change and hybridization were identified as potential threats to the viability of Nelson’s checker-mallow.

We considered all of these threats when considering whether the species continues to warrant protection under the Act. The threat of inundation never materialized; the proposed reservoir was not constructed, given the designation of Walker Creek as part of Oregon’s State Scenic Waterway program in 1992, and as part of the National Wild and Scenic Rivers program in 2019 (Oregon Department of Parks and Recreation 2021). We previously determined that overcollection does not occur to such a degree that it has a population-level effect and that regulatory mechanisms are adequately reducing the effects of threats that could act at a population

scale (Service 2012, pp. 22–28). Weevil predation occasionally impacts individual plants and may locally affect some populations. However, it is seasonal in nature and unpredictable, and we did not find that it occurs at spatial and temporal scales large enough to affect the overall status of the species.

Many small populations of Nelson's checker-mallow remain distributed throughout the species' range. However, the number of large populations has increased significantly since the species was listed in 1993. Based on our assessment, presently 24 sites have more than 1,000 plants. This represents a significant improvement relative to the time of listing, when only five sites had more than 1,000 plants (Service 2012, pp. 17–19). Therefore, we conclude that small population size no longer puts the species at risk of extinction. The potential for hybridization among species of the same genus remains present. However, we found that the best available data indicates that hybridization does not pose a threat to the overall status of the species. Additional discussion of these threats is available in the recovery plan (Service 2010, pp. II–30–II–31; chapter III entire) and in the 2012 5-year review (Service 2012, pp. 22–28).

The stressors identified as having a population-level effects, and therefore included in our assessment of current and future condition, are habitat-related stressors and climate change. The loss, degradation, and fragmentation of prairie habitats have cascading effects that result in smaller population sizes, loss of genetic diversity, reduced gene flow among populations, destruction of population structure, and increased susceptibility to local population extirpation caused by environmental catastrophes. Collectively, this contributes to reduced viability through reductions in resiliency, redundancy, and representation. Climate change acts primarily through changes in habitat quality. The discussion below details the causes and consequences of these stressors on Nelson's checker-mallow.

#### Alteration of Natural and Human-Mediated Disturbance Processes

Change in community structure due to plant succession has been a serious long-term stressor to Nelson's checker-mallow. Habitats occupied by this species contain native grassland species, as well as numerous introduced taxa, and are prone to transition to a later seral stage of vegetative development. The natural transition of prairie to forest in the absence of disturbance such as fire can lead to the loss of Nelson's checker-mallow sites (Service 2012, p.

24). However, active management of habitat through mowing and prescribed burning is effective in reducing Nelson's checker-mallow's exposure to this stressor.

#### Habitat Conversion to Agricultural and Urban Use

Agricultural and urban development has modified and destroyed prairie habitats, resulting in fragmented, widely distributed patches (Service 2012, p. 24). Urban development in particular results in permanent loss of habitat and is of special concern where existing prairie habitat exists adjacent to urban areas (Service 2010, p. III–2). The greatest habitat losses due to land conversion are historical, although periodic additional losses of habitat on private lands may occur. Exposure of Nelson's checker-mallow populations to this stressor is mitigated by protections associated with public land ownership, conservation measures described later in this document, and State regulations requiring mitigation and restoration of degraded habitat.

#### Invasion by Nonnative Plants

Habitats occupied by Nelson's checker-mallow contain a mix of native and nonnative species. As described above, alteration of disturbance processes results in woody encroachment of prairie habitats. Nonnative woody species have been of particular concern, as they can rapidly proliferate and degrade open prairie sites (Service 2012, p. 24). In addition, nonnative, thatch-forming grasses may effectively limit recruitment (Institute for Applied Ecology (IAE) 2017, p. 1). Although invasion by nonnative plants remains a primary stressor to Nelson's checker-mallow populations, management practices including mowing, burning, and shrub removal are an effective approach to mediating these effects.

#### Climate Change

In the Pacific Northwest, temperature increases of 3 to 6 degrees Celsius (°C) (5.4 to 10.8 degrees Fahrenheit (°F)) are predicted by the end of the 21st century (Bachelet et al. 2011, p. 414). Although winter precipitation is predicted to increase, increased summer temperatures are expected to cause increased evapotranspiration, resulting in reduced growing season soil moisture (Bachelet et al. 2011, p. 414) and ultimately affecting prairie habitat quality. Detailed quantitative estimates of the effects of these conditions on Nelson's checker-mallow populations are not available. However, vulnerability assessments show the

species to be moderately vulnerable to the effects of climate change when simulations from four "bookend" global circulation models and three emission scenarios are aggregated (Steel et al. 2011, p. 91).

In order for the species to be resilient to changing environmental conditions and remain viable into the future, maintenance of large populations in heterogeneous habitats across the range of the species is required (Service 2010, p. IV–6). Management activities that maintain open prairie habitats, including mowing, burning, and shrub removal, have resulted in an increase in the number of large populations throughout the range of the species. As described below, the majority of Nelson's checker-mallow sites are managed in accordance with conservation programs that ensure maintenance of prairie conditions and promote the existence of viable Nelson's checker-mallow populations into the future.

#### Conservation Efforts and Regulatory Mechanisms

Despite permanent habitat loss and modification, habitat restoration and protection projects have been implemented on both public and private lands throughout the range of Nelson's checker-mallow. These projects offset some of the permanent habitat losses and, as a result, Nelson's checker-mallow habitat is increasing (Bartow 2020, pers. comm.). The Wetland Reserve Program and other Farm Bill programs administered by the USDA's NRCS have been widely implemented in the Willamette Valley. Other programs, such as the Service's Partners for Fish and Wildlife program and the Act's section 10 programs (*i.e.*, safe harbor agreements and habitat conservation plans), are also available to landowners. These programs are focused on habitat restoration and protection and have contributed significantly to improving the status of Nelson's checker-mallow. These gains are particularly evident in the Corvallis West and Salem West recovery zones.

Rangewide, the majority of sites known to support Nelson's checker-mallow benefit from some type of conservation measure, by virtue of ownership and/or habitat management agreements. These conservation measures offer benefits to the species well into the future. For instance, of 66 sites, 44 are owned by a public entity, which offers indefinite protection from prairie habitat conversion to other uses. Fifty-seven sites are managed in accordance with the conservation programs described above, which

ensure maintenance of prairie conditions required by Nelson's checker-mallow. The terms of these agreements vary, but they are typically valid for 10 to 30 years, with some extending into perpetuity. Collectively, these management regimes ensure habitat protections at a decades-long scale for most sites.

#### *Current Condition*

We assessed the current condition of Nelson's checker-mallow by using the best available information to estimate resiliency, redundancy, and representation. We sourced data for this analysis primarily from the Threatened and Endangered Plant Geodatabase (version 12/31/2019), developed by the Institute for Applied Ecology under a cooperative agreement with the Service for the purposes of tracking the status of species listed under the Act in the Willamette Valley. Additional data were compiled from supplementary reports (IAE 2019), location-specific records, and other information in our files. We use the term "site" rather than "population" to refer to our analytical units throughout our current and future conditions analyses to avoid confusion; the recovery plan defines an independent population as one that contains more than 200 individual plants, but we evaluated sites of all sizes.

#### *Resiliency*

Resiliency, the ability of populations to withstand stochastic events, is commonly determined as a function of metrics such as population size, growth rate, or habitat quality and quantity. We evaluated the current resiliency of Nelson's checker-mallow populations on the basis of abundance, as well as measurable habitat characteristics that represent the habitat-related stressors discussed above. The four specific metrics we included in our assessment of population resiliency (abundance, prairie habitat condition, site management, and site protection) are discussed in more detail below. A complete description of our analytical approach to current conditions is available in the SSA report. Abundance was scored based upon the total number of plants within a site, based on the most recent survey. Sites were scored as 1 (Low: Fewer than 200 plants), 2 (Moderate: 200–1,999 plants), or 3 (High: Equal to or more than 2,000 plants). These categorical thresholds correspond to recovery goals, which state that recovery targets may be achieved with a combination of at least two populations that number at least 2,000 individuals and that scattered

independent populations must number at least 200 individuals.

Prairie habitat condition is a measure of overall habitat quality and was calculated using four distinct habitat metrics that are likely to influence population resiliency: Percent woody cover, percent native cover, native plant richness (number of unique species present), and invasive plant cover. For each site where data on these criteria are available, we assigned a score of 1 (Poor), 2 (Fair), or 3 (Good) for each habitat metric. We then determined overall prairie habitat condition for each site by averaging individual habitat metric scores. Additional detail about scoring categories for each individual metric is available in the SSA report.

Site management reflects the potential for prairie habitat degradation due to natural succession in the absence of natural and anthropogenic disturbance regimes. Site management may also be influential in mediating the effects of climate change through the maintenance of large populations in heterogeneous habitats, and distributed across the range of the species. To account for existing site management that serves to offset these stressors, we assigned each site a score of 1 (Poor: Not managed for prairie conditions or unknown), 2 (Fair: Generally managed for prairie conditions but no management plan in place), or 3 (Good: Managed for prairie conditions with a management plan in place).

Site protection is a measure of the potential for losing Nelson's checker-mallow sites to agricultural and urban development. We used site ownership and the existence of conservation agreements to assess how well each site is protected from development, assigning each site a score of 1 (Poor: Private ownership with no conservation easement or similar program), 2 (Fair: Private ownership with conservation easement or similar program), or 3 (Good: Public ownership or private conservation organization ownership).

To estimate resiliency for each site, we calculated a condition score by averaging the scores for abundance, mean prairie habitat condition, site management, and site protection. We weighted management twice as much as the other factors due to its relative importance to long-term population resiliency (Service 2010, p. IV–5). Based on overall scores, current condition of each site was classified as high (score of greater than or equal to 2.5), moderate (score of 1.75–2.49), or low (score of less than 1.75).

Currently, we know of 66 sites containing Nelson's checker-mallow. Thirty-one of these sites (47 percent) are

in high condition, while 29 of them (44 percent) are in moderate condition. Rangewide, only 6 sites (9 percent) are in low condition. These results demonstrate relatively high resiliency across the range of Nelson's checker-mallow.

#### *Redundancy*

Redundancy is defined as a species' ability to withstand catastrophic events and is determined as a function of the number of populations, as well as their distribution and connectivity. The historical distribution of populations of Nelson's checker-mallow is largely unknown. Throughout its range, Nelson's checker-mallow is restricted to remnant prairie habitats that are highly fragmented due to a history of land conversion and natural succession following alterations to disturbance cycles. However, since the time of listing, habitat restoration, reintroductions, and habitat protection have collectively improved the status of the species. Among the 66 known sites, 334,968 plants are distributed across six of the seven recovery zones, demonstrating overall good redundancy.

#### *Representation*

Representation refers to the ability of a species to adapt to change, and is based upon considerations of geographic, genetic, ecological, and niche diversity. Because we lack information about the genetic diversity of the species, we rely on geographical and ecological diversity in our assessment of representation. Populations of Nelson's checker-mallow are currently distributed in six of the seven recovery zones and occur in both the Willamette Valley and in the Coast Range. The species occupies a range of prairie sites with various soil textures and moisture levels and occurs in a wide range of plant communities including meadows, marshes, wetlands, riparian/tree shrub forests, and disturbed areas. This indicates that the species has the capacity to adapt to a variety of environmental conditions and has good representation.

#### *Future Viability*

To assess the future viability of Nelson's checker-mallow, we considered the factors that will influence the species in the foreseeable future. We define the foreseeable future as 25 to 50 years. This interval was chosen because it encompasses the length of time over which we conclude we can make reliable predictions about the anticipated effect of climate change. In addition, this period of time is sufficient to observe population trends

for the species, based on its life-history characteristics. It also captures the terms of many of the management plans and conservation easements that are in effect at Nelson's checker-mallow sites.

We determined that, in the future, Nelson's checker-mallow will continue to be influenced by the factors that have historically influenced and are currently influencing the species, albeit at different relative rates. Therefore, in our analysis of future viability, we considered habitat-related changes and climate change. We considered the specific sources of habitat loss, degradation, and fragmentation (alteration of natural and human-mediated disturbance processes, habitat conversion to agricultural and urban use, and invasion by nonnative plants) in light of ongoing conservation support, including habitat management and site protection.

We make several assumptions about ongoing conservation support in the foreseeable future. Support for the conservation of Nelson's checker-mallow has been high among government agencies, nongovernmental conservation organizations, and some private landowners. We assume that priority recovery and management actions for the species will continue at approximately the current pace and that the species will continue to benefit from this ongoing conservation support. We base this assumption on the inclusion of Nelson's checker-mallow in a recovery plan that includes several other listed plants and insects, and that emphasizes restoration and maintenance of prairie habitat for the benefit of numerous species.

Management of existing sites for the restoration or maintenance of open prairie conditions is expected to continue. All of the protected sites have some level of management plan. These management plans vary in scope and complexity across ownerships, but all provide at least a basic level of habitat management that will benefit Nelson's checker-mallow. We anticipate that efforts to formalize new management plans where they do not currently exist, and to update existing management plans in response to changing conditions, will continue. Again, we base this assumption on the fact that prairie habitat is managed for multiple species, some of which are listed as endangered or threatened species under the Act. This provides an impetus for continued formalized management of

these sites and maintenance of Nelson's checker-mallow habitat.

The majority of Nelson's checker-mallow sites are protected through ownership by public agencies or nongovernmental conservation organizations, or through conservation easements. We assume that sites owned by public agencies or conservation organizations will remain so owned. We also assume that conservation easements will continue to provide protections where they currently exist, given that the terms typically range from 30 years to perpetuity. Ongoing efforts to protect additional sites through land acquisitions or enrollment in conservation easements are expected to continue and may result in the protection of additional sites. Although sites not protected by virtue of ownership or conservation easement may be at risk due to development in the future, these sites are in the minority and their status is reflected in our analysis.

#### Resiliency

To assess the future viability of Nelson's checker-mallow, we considered a single scenario where we assumed that climate change will result in a dramatic reduction in abundance across the species' range but site management and protection will remain intact, as discussed above. We then reassessed population condition, applying the same methodology used for assessing current condition.

Published assessments do not provide detailed quantitative estimates of the effects of climate change on Nelson's checker-mallow populations. In order to evaluate the effects of climate change on individual sites, we characterized a worst-case future scenario in terms we could use in our analysis of future condition. In consultation with species experts and conservation partners, we defined the worst-case scenario as one where increased mortality and decreased recruitment culminate in a 50 percent reduction in abundance at all sites. We consider this a worst-case scenario because a 50 percent reduction represents the upper boundary of plausibility; the actual effects of climate change on population sizes are likely to be more moderate. Nevertheless, assuming a 50 percent reduction provides a generous margin of error if the assumptions described above are violated. We acknowledge that uniform response across the species' range is not

likely, and that some populations may fare better than others under future conditions. However, this approach serves to demonstrate future viability under challenging future conditions.

In the scenario described above, resiliency declined only modestly, with 60 sites remaining in high or moderate condition (see Figure 1, below). The number of sites in high overall condition decreased from 31 to 25, relative to current condition, while the number of sites in moderate condition increased from 29 to 35. Sites experiencing reduced condition are relatively well distributed throughout the range of the species, with one site occurring in the Coast Range recovery zone, three sites occurring in the Corvallis West recovery zone, one site occurring in the Portland recovery zone, and one site occurring in the Salem West recovery zone. The number of sites in overall low condition (six sites) does not change in our foreseeable future.

These changes in overall future condition are driven by changes in abundance. In our future scenario, six additional sites fall below 200 individual plants and, therefore, receive a low score for abundance. Sites with low abundance are more vulnerable to stochastic events and carry a higher risk for extirpation in the future. However, the relative importance of site management and protection in guarding against habitat loss and maintaining resiliency is reflected in the relatively modest downward shift in overall future condition, relative to current condition (see Figure 2, below).

#### Redundancy

Our analysis of future condition indicates that redundancy will be maintained in the foreseeable future; 66 extant sites will remain well distributed throughout the current known range of the species. Consequently, no major changes in the species' ability to withstand catastrophes in the future is expected.

#### Representation

The distribution of extant Nelson's checker-mallow sites does not change under the parameters of our future condition analysis. Consequently, changes in ecological diversity are not projected to materialize as a result of climate change, and the species is likely to continue to occupy prairie habitat throughout its range and retain its adaptive capacity.

**Nelson's Checker-mallow Populations**

Future Condition of Current Distribution

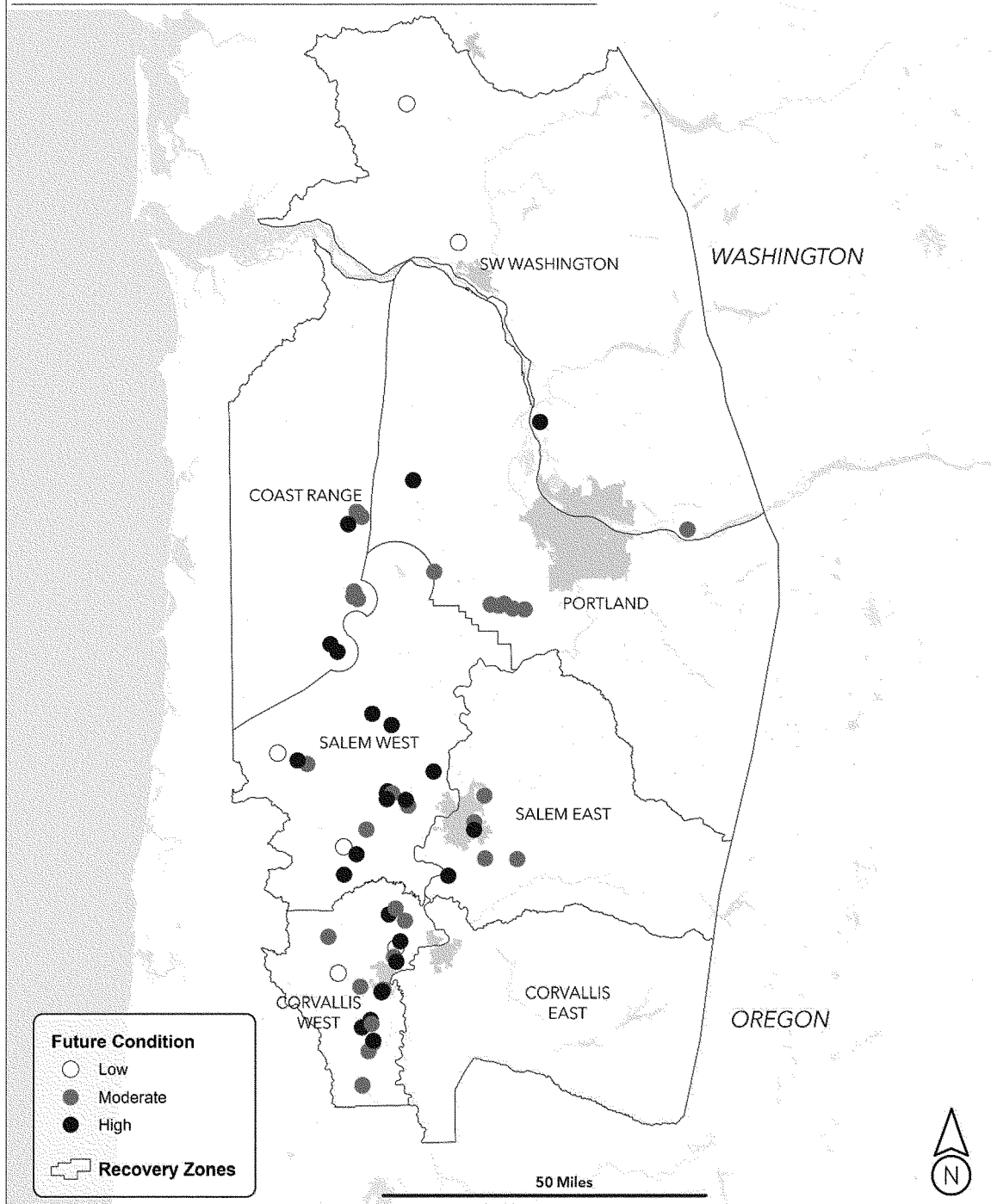


FIGURE 1. Overall future condition of Nelson's checker-mallow sites.

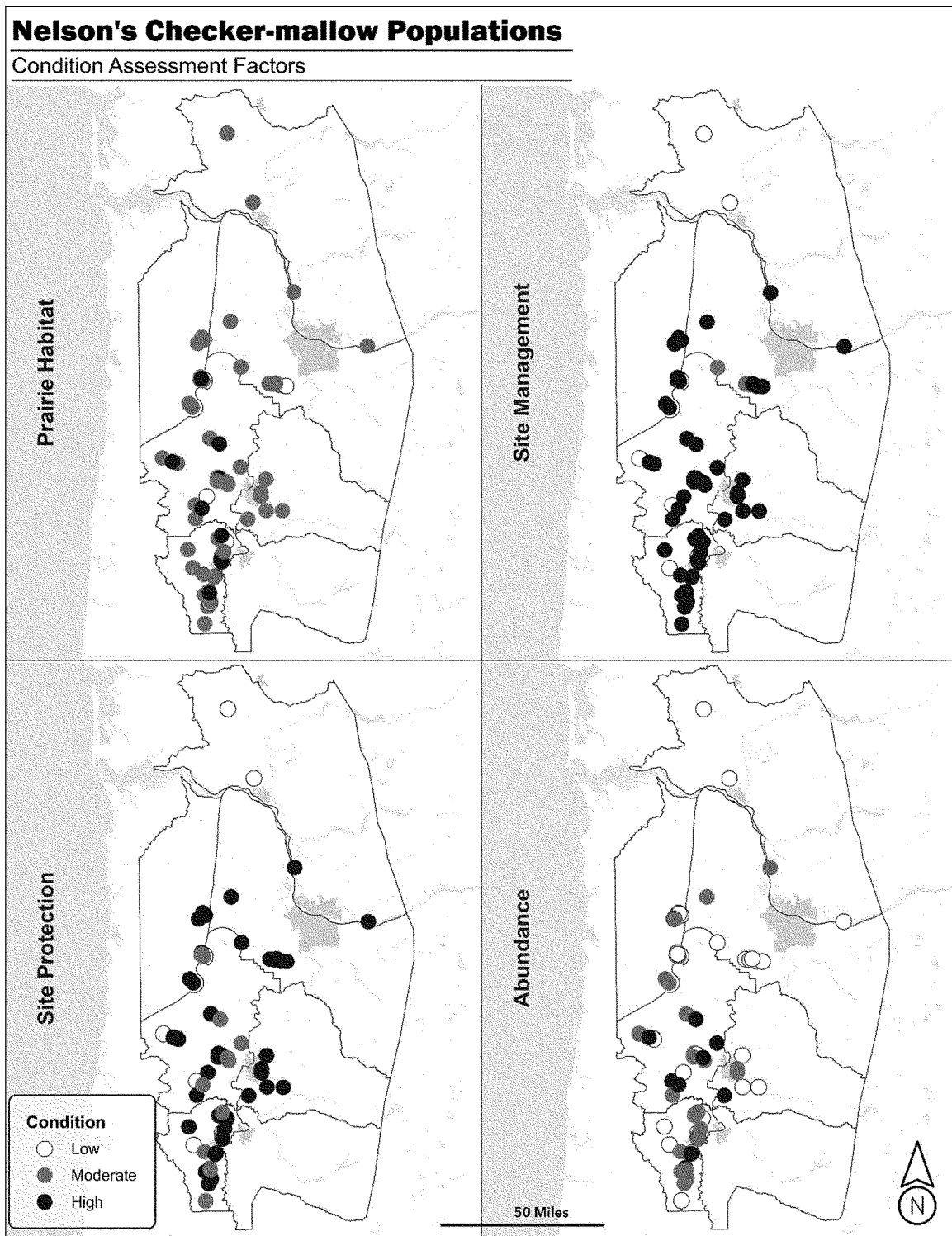


FIGURE 2. Future condition of Nelson's checker-mallow sites, by individual assessment metric.

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Collectively, our analysis of the resiliency, redundancy, and representation demonstrates that in 25 to 50 years, the viability of Nelson's checker-mallow will not be significantly reduced. We note that, by using the SSA framework to guide our analysis of the

scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize

the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors

that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

#### **Determination of Nelson's Checker-Mallow's Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. For a more detailed discussion on the factors considered when determining whether a species meets the definition of an endangered species or a threatened species and our analysis on how we determine the foreseeable future in making these decisions, please see Regulatory and Analytical Framework, above.

#### *Status Throughout All of Its Range*

After evaluating the threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that the primary drivers of the status of Nelson's checker-mallow have been habitat loss, degradation, and fragmentation due to alteration of natural and human-mediated disturbance processes that maintain open prairie habitat, land conversion to agricultural and urban use, and invasion by nonnative plants. The best available information does not indicate that habitat loss due to inundation (Factor A), overcollection (Factor B), predation (Factor C), small population size (Factor E), or hybridization (Factor E) are threats to the viability of the species. To summarize, the threat of inundation never materialized as the proposed reservoir was not constructed; overcollection does not occur to such a degree that it has a population-level effect; weevil predation does occasionally impact individual plants and may locally affect some populations, but it does not occur at spatial and temporal scales large enough to affect the overall status of the species; many small populations of Nelson's

checker-mallow remain distributed throughout the species' range, but the number of large populations has increased significantly since the species was listed; and the potential for hybridization among other species in the same genus remains present, but does not pose a threat to the overall status of the species. A variety of regulatory mechanisms adequately reduce the effects of any threats that act at a population scale (Factor D).

The habitat-related threats other than inundation identified above as drivers of Nelson's checker-mallow status are still present on the landscape. However, their magnitude and scope have decreased from historical levels and have been offset by a variety of management and conservation measures in the nearly 30 years since Nelson's checker-mallow was listed. Active maintenance of prairie habitat through mowing and prescribed burning has demonstrably reduced the threat posed by alteration of disturbance processes and associated woody encroachment (Factor A). The threat of invasive plants (Factor A) has also been significantly reduced as a result of active management. Rangewide, formalized management plans exist for 57 of the 66 sites known to contain Nelson's checker-mallow, a number that is expected to remain relatively constant into the foreseeable future. Similarly, 60 Nelson's checker-mallow sites are either in public ownership, have been acquired by nongovernmental conservation organizations, or are enrolled in conservation easement programs (Factor D), which has substantially reduced the risk of habitat and population losses due to land-use conversion (Factor A). The number of sites protected from conversion to agricultural or urban use is expected to remain relatively constant in the future. In sum, despite the continued presence of habitat-related threats on the landscape, advances in site management and protection have led to a significant reduction in threats and overall improvement in the status of the species since listing.

When Nelson's checker-mallow was listed, we estimated that the species occurred at 48 sites distributed among five population centers (historically interbreeding populations). Only five sites contained more than 1,000 individuals, and 30 percent of the known individuals of the species were threatened with inundation due to the planned construction of a dam. Currently, 334,968 individual plants are distributed across the historical range of the species. They occur at 66 sites, 24 of which have at least 1,000 Nelson's

checker-mallow plants. Our analysis of current condition, based on abundance, habitat quality, site management, and site protection, shows that 60 of those sites are in either moderate or high condition, indicating relatively high resiliency. The sites are distributed among six of the seven recovery zones and occur in varied geographical and ecological settings, demonstrating overall good redundancy and representation.

Subsequent to listing, climate change and its potential to negatively affect prairie habitat was identified as a potential threat to Nelson's checker-mallow. We considered the potential consequences of climate change on the species and evaluated a worst-case future scenario that included a 50 percent reduction in the size of all known populations across the range of the species. Even in the face of such a severe population reduction, the species retained appreciable levels of resiliency, redundancy, and representation, with only six sites showing a reduction in resiliency and with geographical and ecological distribution fully maintained.

We recognize that some habitat-related threats remain present and that they have ongoing impacts to Nelson's checker-mallow. We acknowledge that the specific effects of climate change on Nelson's checker-mallow and its habitat are uncertain but may have a negative impact. However, we found that current and expected patterns in site protection and habitat management are sufficient to prevent affects to the species such that it would meet the Act's definition of an endangered species or a threatened species. Thus, after assessing the best available information, we determine that Nelson's checker-mallow is not in danger of extinction now or likely to become so in the foreseeable future throughout all of its range.

#### *Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that Nelson's checker-mallow is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species is in danger of extinction now or likely

to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species’ range.

In undertaking this analysis for Nelson’s checker-mallow, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened.

For Nelson’s checker-mallow, we considered whether the threats are geographically concentrated in any portion of the species’ range at a biologically meaningful scale. We examined the following threats: habitat loss, degradation, and fragmentation due to alteration of natural and human-mediated disturbance processes that maintain open prairie habitat, land conversion to agricultural and urban use, and invasion by nonnative plants; and climate change.

The threat of habitat loss from alteration of disturbance processes, land-use conversion, and invasion of nonnative plants has decreased in all portions of the species’ range since the time listing, due to land protection efforts and active habitat management. Although these residual threats influence the species variably across its range, there is no portion of the range where there is currently a concentration of threats at a biologically meaningful scale, relative to other areas of the range. In the foreseeable future, climate change may interact synergistically with other threats to negatively affect habitat quality. We acknowledge that uniform response across the species’ range is not likely, and that some populations may fare worse than others under future conditions. However, the best available information does not indicate that any portion of the species’ range will deteriorate disproportionately in the foreseeable future. We anticipate that any negative consequence of co-occurring threats will be successfully addressed through the same active management actions that have contributed to the ongoing recovery of Nelson’s checker-mallow and that are expected to continue into the future.

We found no concentration of threats in any portion of the Nelson’s checker-mallow range at a biologically meaningful scale. Therefore, no portion

of the species’ range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This does not conflict with the courts’ holdings in *Desert Survivors v. U.S. Department of the Interior*, 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 959 (D. Ariz. 2017), because, in reaching this conclusion, we did not need to consider whether any portions are significant and, therefore, did not apply the aspects of the Final Policy’s definition of “significant” that those court decisions held were invalid.

#### *Determination of Status*

Our review of the best available scientific and commercial information indicates that Nelson’s checker-mallow does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we propose to remove the Nelson’s checker-mallow from the List of Endangered and Threatened Plants.

#### **Effects of This Rule**

This proposed rule, if made final, would revise 50 CFR 17.12(h) by removing Nelson’s checker-mallow from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect Nelson’s checker-mallow. There is no critical habitat designated for this species, so there would be no effect to 50 CFR 17.96.

#### **Post-Delisting Monitoring**

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. PDM refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed.

If at any time during the monitoring period data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We are proposing to delist Nelson’s checker-mallow based on our analysis in the SSA report, expert opinions, and conservation actions taken. Since delisting would be, in part, due to conservation actions taken by stakeholders, we have prepared a draft PDM plan for Nelson’s checker-mallow. The draft PDM plan discusses the current status of the taxon and describes the methods proposed for monitoring if we delist the taxon. The draft PDM plan: (1) Summarizes the status of Nelson’s checker-mallow at the time of proposed delisting; (2) describes frequency and duration of monitoring; (3) discusses monitoring methods and potential sampling regimes; (4) defines what potential triggers will be evaluated to address the need for additional monitoring; (5) outlines reporting requirements and procedures; (6) proposes a schedule for implementing the PDM plan; and (7) defines responsibilities. It is our intent to work with our partners towards maintaining the recovered status of Nelson’s checker-mallow. We will seek public and peer reviewer comments on the draft PDM plan, including its objectives and procedures (see **FOR FURTHER INFORMATION CONTACT** and Information Requested, above), with the publication of this proposed rule.

#### **Required Determinations**

##### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with determining a species' listing status under the Endangered Species Act. We published a document outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We do not believe that any Tribes would be affected if we adopt this rule as proposed. There are currently no Nelson's checker-mallow sites on Tribal lands, although some sites may lie within the usual and accustomed places for Tribal collection and gathering of resources. We welcome input from potentially affected Tribes on this proposal.

**References Cited**

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Oregon Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend 50 CFR part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

**§ 17.12 [Amended]**

■ 2. Amend § 17.12, in paragraph (h), by removing the entry for “*Sidalcea nelsoniana*” under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

**Martha Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2022–09106 Filed 4–27–22; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

[Docket No. 220421–0103]

**RTID 0648–XR121**

**Endangered and Threatened Wildlife; 90-Day Finding on a Petition To List the Tope Shark as Threatened or Endangered Under the Endangered Species Act**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** 90-Day petition finding, request for information, and initiation of status review.

**SUMMARY:** We, NMFS, announce a 90-day finding on a petition under the Endangered Species Act (ESA) to list the tope shark (*Galeorhinus galeus*) as a threatened or endangered species and to designate critical habitat concurrent with the listing. We find that the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Therefore, we are commencing a review of the status of

the tope shark to determine whether listing under the ESA is warranted. To support a comprehensive status review, we are soliciting scientific and commercial data regarding this species.

**DATES:** Scientific and commercial data pertinent to the petitioned action must be received by June 27, 2022.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2022–0048 by the following method:

- **Electronic Submissions:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA–NMFS–2022–0048 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](https://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Interested persons may obtain a copy of the petition online at the NMFS website: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/petitions-awaiting-90-day-findings>.

**FOR FURTHER INFORMATION CONTACT:** Lisa Manning, NMFS Office of Protected Resources, (301) 427–8466, [lisa.manning@noaa.gov](mailto:lisa.manning@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 15, 2022, we received a petition from the Center for Biological Diversity and Defend Them All Foundation to list the tope shark, *Galeorhinus galeus*, as a threatened or endangered species under the ESA and to designate critical habitat concurrent with the listing. The petition asserts that *G. galeus* is threatened by four of the five ESA section 4(a)(1) factors: (1) Present and threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial and recreational purposes; (3) inadequacy of existing regulatory mechanisms; and (4) other natural or manmade factors. In addition to requesting that we analyze whether the

tope shark warrants listing based on its status throughout all or a significant portion of its range, the petition requests that we analyze whether any distinct population segments (DPS) of tope shark warrant listing. The petition also requests that, if we determine the tope shark or any DPSs of tope shark warrant listing as a threatened species, we promulgate a protective regulation under section 4(d) of the ESA, and requests that we promulgate a regulation under section 4(e) of the ESA for species similar in appearance to the tope shark. The petition is available online (see **ADDRESSES**).

### ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When it is found that substantial scientific or commercial information in a petition indicates the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned during which we will conduct a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review.

Under the ESA, a listing determination may address a species, which is defined to also include subspecies and any vertebrate DPS that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) (jointly, “the Services”) policy clarifies the Services’ interpretation of DPSs for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become

endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms to address identified threats; (5) or any other natural or manmade factors affecting the species’ existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(h)(1)(i)) define “substantial scientific or commercial information” in the context of reviewing a petition to list, delist, or reclassify a species as “credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted.” Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered “substantial information.” In reaching the initial (90-day) finding on the petition, we will consider the information described in sections 50 CFR 424.14(c), (d), and (g) (if applicable).

Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted will depend in part on the degree to which the petition includes the following types of information: (1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) information on adequacy of

regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. See 50 CFR 424.14(d).

If the petitioner provides supplemental information before the initial finding is made and states that it is part of the petition, the new information, along with the previously submitted information, is treated as a new petition that supersedes the original petition, and the statutory timeframes will begin when such supplemental information is received. See 50 CFR 424.14(g).

We may also consider information readily available at the time the determination is made. We are not required to consider any supporting materials cited by the petitioner if the petitioner does not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*, publications, maps, reports, letters from authorities). See 50 CFR 424.14(c)(6).

At the 90-day finding stage, we do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners’ sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition’s information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person conducting an impartial scientific review would conclude it supports the petitioners’ assertions. In other words, conclusive information indicating the species may meet the ESA’s requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone necessitates a negative 90-day finding if a reasonable person conducting an impartial scientific review would conclude that the unknown information itself suggests the species may be at risk of extinction presently or within the foreseeable future.

To make a 90-day finding on a petition to list a species, we first

evaluate whether the information presented in the petition, in light of the information readily available in our files, indicates that the petitioned entity constitutes a “species” eligible for listing under the ESA. Next, if we conclude the petition presents substantial scientific or commercial information suggesting that the petitioned entity may constitute a “species,” we evaluate whether the information indicates that the species may face an extinction risk such that listing, delisting, or reclassification may be warranted; this may be indicated in information expressly discussing the species’ status and trends, or in information describing impacts and threats to the species. We evaluate whether the petition presents any information on specific demographic factors pertinent to evaluating extinction risk for the species (e.g., population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species. We then evaluate whether the petition presents information suggesting potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1) of the ESA.

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by nongovernmental organizations, such as the International Union on the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a

species’ conservation status do “not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act” because NatureServe assessments “have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide” (<https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories>). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

#### Topo Shark Species Description

The tope shark, *G. galeus*, is one of 39 recognized species within the houndshark family, Triakidae, and is known by many other common names, including soupfin shark and school shark. The tope sharks’ range includes most oceans, specifically the Northeast, Eastern Central, Southwest and Southeast Atlantic Ocean; the Southwest, Southeast, Western Central, Eastern Central, and Northeast Pacific Ocean; the Mediterranean Sea, and the Eastern Indian Ocean. They can be found in water depths of up to 826 meters, but prefer coastal areas and occur most frequently within depths up to 200 m (Walker *et al.* 2020). Maximum size varies regionally, with maximum lengths of up to about 6 feet (200 cm, (total length) and weights of up to 98.5 pounds 44.7 kg (Walker *et al.* 2020; Florida Museum, Fish Profile 2021). Age at maturity may also vary regionally and has been reported to range from about 10–15 years for females and about 12–17 years for males (Walker *et al.* 2020, COSEWIC 2007). Maximum lifespan is 40 to 60 years, and generation length has been estimated to be 23 to 26.3 years (Walker *et al.* 2020, COSEWIC 2007). Tope sharks reproduce every 1 to 3 years, although a triennial cycle may be more common (Peres and Vooren 1991, Nosal *et al.* 2021). They are ovoviviparous (*i.e.*, eggs are fertilized internally and hatch internally, with no placental connection to the mother) and produce litters of 20–35 pups on average after a roughly 12-month gestation period (Walker *et al.* 2017, Nosal *et al.* 2021). The diet is broad, and includes many teleost fishes (e.g., herring,

sardines, anchovies, hake, cod, salmon, halibut), as well as some invertebrates (e.g., squid, octopus, crabs, annelids; Walker 1999; Florida Museum, Fish Profile 2021).

Tope sharks are highly migratory and have been reported to occur in small schools segregated by sex and age. Genetic and tagging data indicate that the species may be structured as six regional populations, delineated generally as Northeast Atlantic (includes the Mediterranean Sea), southern Africa (Namibia to East London, South Africa), Southwest Atlantic (southern Brazil to Patagonia), Northeast Pacific (British Columbia to Mexico, including the Gulf of California), Southeast Pacific (Ecuador to Chile), and Tasman Sea (Australia and New Zealand; Chabot and Allen 2009, Hernández 2013, Walker *et al.* 2020, Nosal *et al.* 2021).

#### Analysis of the Petition

The petition addresses a single species, *G. galeus*; provides the scientific and common names for this species; and clearly indicates the administrative measures being requested. The petition also contains a detailed, narrative justification for the requested listing under the ESA and provides information on the species’ taxonomy, geographic distribution, and threats. Global abundance estimates appear to be lacking for this species, but information is provided in the petition and supporting references regarding population status and trends. The petition is accompanied by literature citations and electronic copies of supporting material, including published scientific literature, web pages, and unpublished reports.

In the sections that follow, we provide a synopsis of our analysis of the information provided in the petition and readily available in our files regarding tope shark population status and trends and whether and to what extent factors identified in section 4(a)(1) of the ESA may cause the tope shark to be an endangered species or a threatened species.

#### Population Status and Trends

The petition presents information and references indicating that the tope shark has declined in most parts of its range, and that these declines have been driven by overharvest for commercial purposes. The tope shark is currently categorized as “critically endangered” on the IUCN Red List based on trend analyses of abundance indices indicating steep declines in many parts of the range (Southwest Atlantic, southern Africa, Australia, and

Northeast Atlantic) and an estimated median reduction of 88 percent for the global population over three generations (79 years; Walker *et al.* 2020).

The most recent IUCN assessment by Walker *et al.* (2020) presents the results of separate trend analyses completed using available data from multiple geographic regions of the tope shark's range. For instance, using standardized catch-per-unit-effort (CPUE) data from three fishery-independent survey datasets from the northern (2005–2018) and southern (1997–2016) Celtic Seas ecoregion and the Azores (1990–2015), Walker *et al.* (2020) estimated annual rates of reduction of tope shark in the Northeast Atlantic region of 1.7 percent and an estimated median reduction of 76.6 percent over three generations (79 years). Using limited CPUE data for the Southwest Atlantic (specifically Argentina) from 1992–2015, they estimated annual rates of decline of 5.9 percent and a median reduction of 99.3 percent over three generations. For Australia, Walker *et al.* (2020) used 74 years of stock assessment abundance data, collected from 1927–2000, and estimated annual rates of reduction of 2.8 percent and a median reduction of 90.1 percent over three generation lengths. Although the available data suggest tope sharks in New Zealand and Australia are a single population, Walker *et al.* (2020) also completed a separate trend analysis for New Zealand. Using standardized CPUE data collected from several locations off New Zealand during 1990–2016, they estimated annual rates of decline of 0.5 percent and an estimated median reduction of 29.8 percent over three generations (Walker *et al.* 2020).

A stock assessment has also been completed for tope shark in South Africa, where it remains a commercially targeted species. Using commercial fisheries catch data as well as scientific survey data, the assessment indicated a continuous declining trend in tope shark abundance at a rate of about 2.7 percent per year from 1991 to 2016, and an estimated 85.1 percent decline over three generations (Winker *et al.* 2019). No stock assessments or abundance indices appear to be available for the Northeast Pacific region (COSEWIC 2007, Walker *et al.* 2020).

#### *ESA Section 4(a)(1) Factors*

The petition asserts that the tope shark is experiencing threats under section 4(a)(1)(A) of the ESA as a result of habitat degradation and destruction associated with climate change. The petition discusses and provides references regarding direct and indirect climate-change-driven impacts,

including physical and chemical changes to ocean habitats (e.g., ocean warming, increasing ocean acidity), changes in ocean circulation patterns, declines in primary productivity and upper-level consumers, range shifts for shark species, and negative health consequences for sharks. Available scientific evidence has clearly established that climate change has affected and continues to affect the distributions of many marine species as well as their productivity and phenology (Bindof *et al.* 2019, Morely *et al.* 2018). Experimental results have also revealed that ocean warming and acidification occurring under levels of carbon dioxide projected to occur by the end of this century can impair prey detection (olfaction) and hunting behavior and impact body condition and growth in some shark species (Dixson *et al.* 2015, Pistevos *et al.* 2015, Rosa *et al.* 2017). Although these various climate-change impacts are concerning, the extent to which tope sharks in particular may be threatened by such impacts is not clear based on the information in the petition or otherwise readily available.

The petition also asserts that high voltage undersea cables are degrading ocean habitats used by tope sharks and are contributing to extinction risk for this species. Specific impacts from high voltage undersea cables identified in the petition include interference with tope sharks' navigation, feeding, and predation. However, information to substantiate that tope sharks are being negatively affected by undersea power cables is not provided and appears to be lacking in general.

The petition identifies overutilization for commercial purposes under section 4(a)(1)(B) of the ESA and inadequate management of fisheries under section 4(a)(1)(D) of the ESA as the primary threats to the tope shark. Information in the petition and the cited references indicate that tope sharks have been fished commercially, typically with gillnets and longlines, throughout most of their range for meat, fins, and livers, which are rich in vitamin A. Demand for the liver oil in particular led to relatively intense commercial harvest of tope sharks during the 1930s and 1940s in several parts of its range, including the Northeast Pacific, Southwest Atlantic, South Africa, Australia, and New Zealand. This period of increased fishing pressure subsided fairly quickly, however, as the demand for shark liver oil declined and, in some locations, as stocks were depleted (COSEWIC 2007, Walker 1999). For example, from 1937–1949, an estimated 840,000 tope sharks were harvested in the Northeast Pacific

for their livers, and the recorded commercial catch declined from a peak of over 4,000 t in 1939 to 287 t by 1944 (Walker 1999, Walker *et al.* 2020). This population is thought to have collapsed as a result of overexploitation, and although it is currently subject to a low level of commercial and recreational fishing in California, its current status is unknown (COSEWIC 2007).

Information presented in the petition and cited references regarding ongoing commercial fishing for and retention of tope sharks in other parts of the range do suggest cause for concern. For instance, in South Africa, results of the fairly recent stock assessment indicate a greater than 99 percent probability that the stock is overfished and subject to overfishing (Winker *et al.* 2019). The recent IUCN assessment by Walker *et al.* (2020), citing a stock assessment for Australia, states that the Australian government has classified the tope shark as overfished and that the current biomass of this stock is below 20 percent of unexploited levels. The petition also notes that for the Northeast Atlantic, the landings limit recommended in 2018 and 2019 (*i.e.*, 376 t) by the International Council for the Exploration of the Sea (ICES) has been exceeded based on the incomplete annual landings reported for tope shark during 2005–2018, which ranged from 542 t to 715 t (Walker *et al.* 2020).

Directed fishing for tope sharks is prohibited in several areas, including the United Kingdom (since 2008, except for rod and reel), Mediterranean (since 2012), and Canada (since 2012). Other management measures in place within some range countries to address both directed and incidental take of tope sharks include limits on retention of bycatch and daily catch limits, seasonal and spatial area closures (e.g., breeding and nursery areas), quotas and limited entry systems, and gear restrictions. Within the United States, Federal protections (e.g., the Shark Conservation Act), as well as regulations in individual States regarding possession, sale, and trade of shark fins are being implemented to prevent the practice of shark finning (*i.e.*, removing shark fins and discarding the body at sea). In 2020, the tope shark was also listed on Appendix II of the Convention on Migratory Species of Wild Animals, which does not directly confer protections on the species, but does establish a framework and call upon Parties to develop agreements to conserve the species. Evidence of stock recovery or stabilization following implementation of some of these management measures is noted for at least a few locations, including the

Northeast Pacific and Northeast Atlantic (Walker *et al.* 2020); however, the available trend analyses and stock assessments discussed in the petition suggest that existing management measures may be inadequate to prevent population declines throughout most of the range. Recreational catch of tope sharks is also unreported or under-reported, and therefore its impact and any related management measures cannot be fully assessed.

Lastly, the petition asserts that tope sharks are threatened by toxic pollutants in the marine environment, including dichlorodiphenyltrichloroethane (DDT), polychlorinated biphenyls (PCBs), and trace metals (*e.g.*, mercury). That sharks bioaccumulate such contaminants has been well documented, and concentrations of various contaminants in sharks have been shown to vary with multiple factors such as diet, length, weight, sex, species, and habitat (Walker 1999, Lyons *et al.* 2013, Kibria and Haroon 2015). High mercury concentrations in tope sharks in particular led to concerns over human consumption of the meat and consequently impacted demand and affected markets in some locations during and 1970s and 1980s (Walker 1999). The petition states that bioaccumulation of toxic contaminants may have negative health consequences for tope sharks, such as impaired immune function, endocrine disruption, infertility, and birth defects. However, information to indicate whether and how toxic contaminants are negatively affecting tope shark health in particular is not provided and may not be available.

#### Petition Finding

After reviewing the petition, the literature cited in the petition, and other information readily available in our files, we find there is substantial scientific and commercial information

indicating that listing tope sharks under the ESA may be warranted. Therefore, in accordance with section 4(b)(3)(A) of the ESA and NMFS' implementing regulations (50 CFR 424.14(h)(2)), we will commence a status review of this species. During the status review, we will determine whether *G. galeus* is in danger of extinction (endangered) or likely to become so (threatened) throughout all or a significant portion of its range. As the petition did not request that we consider listing any specific DPSs, we will first assess the status of the taxonomic species, and then based on that assessment, consider whether additional analysis of potential DPSs is warranted and appropriate. As required by section 4(b)(3)(B) of the ESA, within 12 months of the receipt of the petition (February 15, 2023), we will make a finding as to whether listing the tope shark (or any DPSs) as an endangered or threatened species is warranted. If listing is warranted, we will publish a proposed rule and solicit public comments before developing and publishing a final rule. If applicable, the request to promulgate regulations under section 4(d) and section 4(e) of the ESA would be considered in accordance with the Administrative Procedure Act (5 U.S.C. 553) and applicable Departmental regulations, and appropriate action would be taken (50 CFR 424.14(j)).

#### Information Solicited

To ensure that the status review is based on the best available scientific and commercial data, we are soliciting relevant data and information from interested parties regarding the tope shark. Specifically, we are soliciting information for this species in the following areas:

(1) Historical and current abundance and population trends throughout its range;

(2) Historical and current distribution, population structure, and genetic diversity;

(3) Current condition of its habitat and current and future threats to these habitats;

(4) Historical and current data on bycatch and retention of tope sharks in industrial, commercial, artisanal, and recreational fisheries throughout its range;

(5) Data on trade of tope shark and their products, including fins, meat, and liver oil; and

(6) The effects of other known or potential threats to tope sharks over the short-term or long-term; and

(7) Management, regulatory, or conservation programs for tope sharks, including mitigation measures related to any known or potential threats to the species within specific range countries.

We request that all data and information be accompanied by supporting documentation such as reprints of pertinent publications or bibliographic references. Please send any comments in accordance with the instructions provided in the **ADDRESSES** section above. We will base our findings on a review of the best scientific and commercial data available, including relevant information received during the public comment period.

#### References Cited

A complete list of all references cited herein is available upon request (See **FOR FURTHER INFORMATION CONTACT**).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 22, 2022.

**Samuel D. Rauch, III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. 2022-09032 Filed 4-27-22; 8:45 am]

**BILLING CODE 3510-22-P**

# Notices

Federal Register

Vol. 87, No. 82

Thursday, April 28, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 31, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such person are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

### Office of the Chief Financial Officer

*Title:* Suspension and Debarment and Drug-Free Workplace Certifications.

*OMB Control Number:* 0505–0027.

*Summary of Collection:* Suspension and debarment is a discretionary or statutory administrative action taken by Federal agencies to protect the government by excluding person and entities that are not presently responsible from participating in Federal programs or activities. The information will be collected by USDA Federal financial assistance agencies as certifying information concerning applicant suitability in compliance with Federal Suspension and Debarment and Drug-Free Work Place regulations, as defined by 2 CFR parts 180, 417 and Public Law, 100–690, Title V, Subtitle D; 41 U.S.C. 8101 *et seq.*, 2 CFR parts 182 and 421.

*Need and Use of the Information:* The information will be collected from individuals or private entities; businesses or other for profit; not-for-profit; Federal, state, local or tribal governments; institutions of higher education or other research organizations; and foreign organizations. Several USDA agencies and staff offices will use the information to determine applicant suitability concerning distribution of financial assistance.

The information will be collected using the following Forms: AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transaction; AD–1048, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions; AD–1049, Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other than Individuals; AD–1050, Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative II—For Grantees Who Are Individuals; AD–1052, Certification Regarding Drug-Free Workplace State and State Agencies, Federal Fiscal Year.

*Description of Respondents:* Individuals or household; Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

*Number of Respondents:* 1.

*Frequency of Responses:* Reporting: One time.

*Total Burden Hours:* 1.

**Levi Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–09080 Filed 4–27–22; 8:45 am]

**BILLING CODE 3410–KS–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 31, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it

displays a currently valid OMB control number.

### Food and Nutrition Service

*Title:* 7 CFR part 220, School Breakfast Program.

*OMB Control Number:* 0584–0012.

*Summary of Collection:* Section 4 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1773) authorizes the School Breakfast Program as a nutrition assistance program and authorizes payments to States to assist them to initiate, maintain, or expand nonprofit breakfast programs in schools. The provision requires that “Breakfasts served by schools participating in the School Breakfast Program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.” The School Breakfast Program is administered and operated in accordance with the National School Lunch Act (NSLA). The Program is administered at the State and local levels, including school district and school site levels, and the operations include the submission and approval of applications to participate in the program, execution of agreements, record maintenance, submission of claims, payment of claims, monitoring procedures, and providing technical assistance.

*Need and Use of the Information:* This collection is mandatory to administer and operate this program in accordance with the authorizing statutes. States, school food authorities (SFAs), and schools are required to keep accounts and records as may be necessary to enable FNS to determine whether the program is in compliance. SFAs collect breakfast counts from the schools so that they can submit claims and related information to the State agencies. The State agencies then report this information to FNS. The State agencies, the SFAs, and the schools also maintain records related to the School Breakfast Program. FNS uses the information to monitor State agency and SFA compliance, determine the amount of funds to be reimbursed, evaluate and adjust program operations, and to monitor program funding and program trends.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 105,700.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Monthly, Annually, Other (Daily Meal Records)

*Total Burden Hours:* 3,736,676.

**Levi Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–09074 Filed 4–27–22; 8:45 am]

**BILLING CODE 3410–30–P**

### DEPARTMENT OF AGRICULTURE

#### Submission for OMB Review; Comment Request; Reinstatement of a Previously Approved Information Collection

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency’s estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology Comments regarding these information collections are best assured of having their full effect if received by May 31, 2022. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Agricultural Marketing Service

*Title:* National Bioengineered Food Disclosure Standard.

*OMB Control Number:* 0581–0315.

*Summary of Collection:* The U.S. Department of Agriculture (USDA) administers the Agricultural Marketing Act of 1946 (Title II of the Act of August 14, 1946). Public Law 114–216 amended the Agricultural Marketing Act of 1946, directing the Secretary of Agriculture to establish the National Bioengineered Food Disclosure Standard (7 CFR 66) for disclosing certain foods that are bioengineered or contain bioengineered ingredients. The final rule (National Bioengineered Food Disclosure Standard [7 CFR 66]) fulfils USDA’s need to establish requirements and procedures to carry out the new standard. Public Law 114–216 also addressed Federal preemption of State and local genetic engineering labeling requirements and specifies that certification of food under USDA’s National Organic Program (7 CFR 205) were considered sufficient to make claims about the absence of bioengineering in the food. AMS gathered industry input and conducted rulemaking on the National Bioengineered Food Disclosure Standards.

*Need and Use of the Information:* The audit process involves access to records at the entity’s place of business. AMS would examine the records during normal business hours to verify compliance with the standard’s disclosure requirements. Under § 66.304(c), if an entity fails to provide AMS access to records, AMS would determine that the entity did not comply and would make the determination public. Companies would know the requirements through a list that AMS will maintain containing bioengineered crops and foods that may be produced in other countries. As set forth in § 66.300, recordkeeping applies to records for food on the list of bioengineered foods. As set forth in § 66.302(a)(3), records would have to be maintained for at least two years after the food’s distribution for retail sale.

*Description of Respondents:* Business or other for-profit; Not for-profit institutions.

*Number of Respondents:* 155,098.

*Frequency of Responses:* Recordkeeping; Annually.

*Total Burden Hours:* 353,952.

**Levi S. Harrell,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–09078 Filed 4–27–22; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE****Forest Service****Information Collection: Commercial Use of the Woodsy Owl Symbol**

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the USDA Forest Service is seeking comments from all interested individuals and organizations on the extension without revision of a currently approved information collection, Commercial Use of the Woodsy Owl Symbol.

**DATES:** Comments must be received in writing on or before June 27, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email:* [tinelle.bustam@usda.gov](mailto:tinelle.bustam@usda.gov).
- *Mail:* Tinelle Bustam, Director

Office of the Conservation Education Program U.S. Forest Service, 201 14th Street SW, Mail Stop 1147, Washington, DC 20250–1147.

- *Telephone:* 202–945–7672.
- *Hand Delivery/Courier:* Tinelle

Bustam, Director, Office of the Conservation Education Program, U.S. Forest Service, 201 14th Street SW, Mail Stop 1147, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Tinelle Bustam, Director, Office of the Conservation Education Program, 202–945–7672. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

*Title:* Commercial Use of the Woodsy Owl Symbol.

*OMB Number:* 0596–0087.

*Expiration Date of Approval:* November 30, 2022.

*Type of Request:* Extension without revision of a currently approved information collection.

*Abstract:* The Woodsy Owl-Smoky Bear Act of 1974 established the Woodsy Owl symbol and slogan, authorizes the Secretary of Agriculture to manage the use of the slogan and symbol, authorizes the licensing of the symbol for commercial use, and provides for continued protection of the symbol. Part 272 of Title 36 of the Code of Federal Regulations authorizes the

Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect royalty fees. Commercial use includes replicating Woodsy Owl symbol or logo on items, such as tee shirts, mugs, pins, figurines, ornaments, stickers, and toys and using the image and or slogan of the icon in motion pictures, documentaries, TV, magazine stories, and books, magazines, and other for-profit paper products.

Woodsy Owl is America's symbol for the conservation of the environment. The public service campaign slogans associated with Woodsy Owl are "Give a Hoot, Don't Pollute" and "Lend a Hand, Care for the Land." The mission statement of the Woodsy Owl's conservation campaign is to help young children discover the natural world and join in life-long actions to care for that world.

The USDA Forest Service Conservation Education Program Director will use the collected information to determine if the applicant will receive a license or renewal of an existing license and the associated royalty fees. Information collected includes, but is not limited to, tenure of business or non-profit organization, current or planned products, physical location, projected sales volume, and marketing plans. Licensees submit quarterly reports, which include:

1. A list of each item sold with the Woodsy Owl symbol;
2. Projected sales of each item;
3. Sales price of each item;
4. Total sales subject to Forest Service royalty fee;
5. Royalty fee due based on sales quantity and price;
6. Description and itemization of deductions (such as fees waived or previously paid as part of advance royalty payment);
7. New total royalty fee the business or organization must pay after deductions;
8. Running total amount of royalties accrued in that fiscal year; and
9. Typed name and signature of the business or organizational employee certifying the truth of the report.

Data gathered in this information collection are not available from other sources.

*Type of Respondents:* Individuals, for profit businesses and non-profit organizations.

*Estimated Annual Number of Respondents:* 21 licensees, of which an average of 10 respond per year.

*Estimated Annual Number of Responses per Respondent:* 4.

*Estimated Total Annual Burden on Respondents:* 20 hours.

*Comment is Invited:* Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

**Jaelith Hall-Rivera,**

*Deputy Chief, State & Private Forestry.*

[FR Doc. 2022–09090 Filed 4–27–22; 8:45 am]

**BILLING CODE 3411–15–P**

**DEPARTMENT OF AGRICULTURE****Forest Service****Information Collection: Wilderness and Wild and Scenic Rivers Program Administration**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the USDA Forest Service is seeking comments from all interested individuals and organizations on the renewal of a currently approved information collection, *Wilderness and Wild and Scenic Rivers Program Administration*.

**DATES:** Comments must be received in writing on or before June 27, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Eric Sandeno, Wilderness/Wild and Scenic Rivers Information Manager, USDA Forest Service, 1627 Cemetery Road/PO Box 210, Marlinton, WV 24954.

Comments also may be submitted via facsimile to Eric Sandeno at 304–799–6820 or by email at [eric.sandeno@usda.gov](mailto:eric.sandeno@usda.gov).

Due to COVID-19 health and safety protocols to protect employees and visitors, Forest Service offices may be closed to the public. The public may inspect comments received at the USDA Forest Service, 1627 Cemetery Road, Marlinton, WV 24954 during normal business hours and if arrangements are made in advance.

**FOR FURTHER INFORMATION CONTACT:** Eric Sandeno, Wilderness/Wild and Scenic Rivers Information Manager, at 304-799-4334, extension 7995548 or via email at [eric.sandeno@usda.gov](mailto:eric.sandeno@usda.gov). Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Information Service (FIRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Wilderness and Wild and Scenic Rivers Program Administration.  
*OMB Number:* 0596-0106.

*Expiration Date of Approval:* November 30, 2022.

*Type of Request:* Renewal with revisions.

*Abstract:* Visitor Permits and Visitor Registration Cards may be required as a means to disperse use, protect natural and cultural resources, provide for the health and safety of visitors, allocate capacity, provide special restrictions or important information the visitor should know, and address overuse and site deterioration in environmentally sensitive areas.

**Forms**

FS-2300-30, *Visitor's Permit*. Information collected includes the visitor's name and address, area(s) to be visited, dates of visit, length of stay, location of entry and exit points, method of travel, number of people in the group, and where applicable, the number of pack and saddle stock (that is, the number of animals either carrying people or their gear), the number of dogs, and the number of watercraft and/or vehicles (where allowed).

The Forest Service employee who completes the Visitor's Permit will note on the permit any special restrictions or important information the visitor should know. The visitor receives a copy of the permit and instructions to keep the permit with them for the duration of the visit.

FS-2300-32, *Visitor Registration Card*. Information collected includes the visitor's name and address, area(s) to be visited, dates of visit, length of stay, location of entry and exit points, method of travel, number of people in the group, and where applicable, the number of pack and saddle stock (that

is, the number of animals either carrying people or their gear) in the group, the number of dogs, and the number of watercraft and/or vehicles (where allowed).

*Estimate of Annual Burden:* 3 minutes.

*Type of Respondents:* Individuals.

*Estimated Annual Number of Respondents:* 552,000.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 27,600 hours.

*Comment is invited on:* (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: April 25, 2022.

**Tina J. Terrell,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2022-09114 Filed 4-27-22; 8:45 am]

**BILLING CODE 3411-15-P**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**Information Collection; Federal and Non-Federal Financial Assistant Instruments**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension with revision of a currently approved information collection, *Federal and Non-Federal Financial Assistant Instruments*.

**DATES:** Comments must be received in writing on or before June 27, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** Comments concerning this notice should be addressed to Gavin Smith, Policy Analyst, Grants and Agreements, G & A Policy, 201 14th Street Mail Stop 1138, SW Washington, DC 20227 and telephone 541-975-4730.

Comments also may be submitted via facsimile to by email to: [SM.FS.wo\\_ga\\_policy@usda.gov](mailto:SM.FS.wo_ga_policy@usda.gov).

Comments submitted in response to this notice may be made available to the public through relevant websites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at 201 14th Street Mail Stop 1138, SW Washington, DC 20227 during normal business hours. Visitors are encouraged to call ahead to (202) 720-6270 to facilitate entry to the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to [SM.FS.wo\\_ga\\_policy@usda.gov](mailto:SM.FS.wo_ga_policy@usda.gov).

**FOR FURTHER INFORMATION CONTACT:**

Comments may be submitted to, WO Office of Grants and Agreements, G&A Policy, email [SM.FS.wo\\_ga\\_policy@usda.gov](mailto:SM.FS.wo_ga_policy@usda.gov). Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Federal and Non-Federal Financial Assistant Instruments.

*OMB Number:* 0596-0217.

*Expiration Date of Approval:* February 28, 2023.

*Type of Request:* Extension with revisions of a currently approved information collection.

*Abstract:* In order to perform specific Forest Service activities, Congress

created several authorities as well as new authorities increasing the total burden hours to assist the Agency in carrying out its mission. The Forest Service issues partnership agreements under specific authorities exempt from the Federal Grants and Cooperative Agreements Act (FGCAA). This collection is for existing forms as well as a new form to supplement and ultimately phase out the older forms by the next collection period that will be used to enter into the following agreement types by the Forest Service:

(1) Participating Agreements (replaces FS-1500-16 and 16A through 16G);

(2) Cost-Reimbursable Agreement (replaces FS-1500-12);

(3) Joint Venture Agreement (replaces FS-1500-14 and 14A);

(4) Cooperative Research and Development Agreements (replaces FS-1500-13 through 13B); and,

(5) Challenge Cost-Share Agreement (replaces FS-1500-10 and 10A through 10C).

(6) Stewardship Agreements (replaces FS-1500-21, FS-1500-21A, through FS-1500-21D).

(7) Good Neighbor Agreements (replaces FS-1500-36, FS-1500-36A, FS-1500-36B).

(8) Domestic Grants (Letter).

(9) Fixed Amount Awards (Letter).

(10) International Grants (Letter).

(11) International Cooperative Agreements (Letter).

(12) Cooperative Agreements (Letter).

In addition to Federal Financial Assistance (FFA), Congress created specific authorizations for acts outside the scope of the FGCAA. Appropriations language was developed to convey authority for the Forest Service to enter into relationships that are outside the scope of the FGCAA. The Forest Service implements these authorizations using instruments such as collection agreements, FGCAA exempted agreements, memorandums of understanding, and other agreements which mutually benefit participating parties. These instruments fall outside the scope of the Federal Acquisition Regulations (FAR) and often require financial plans and statements of work. Forest Service employees collect information from cooperating parties from the pre-award to the closeout stage via telephone calls, emails, postal mail, and person-to-person meetings to create, develop, and administer these funded and non-funded agreements. The multiple means for respondents to communicate their responses include forms, non-forms, electronic documents, face-to-face, telephone, and internet. The scope of information collected varies; however, it typically includes

the project type, project scope, financial plan, statement of work, and cooperator's business information.

The Forest Service would not be able to create, develop, and administer these funded and non-funded agreements without the collected information. The Agency would also be unable to develop or monitor projects, make or receive payments, or identify financial and accounting errors.

*Estimate of Annual Burden:* 1 to 4 hours annually per person.

*Type of Respondents:* Non-profit and for profit institutions; institutions of higher education; State, local, and Native American tribal governments, individuals; foreign governments; and organizations.

*Estimated Annual Number of Respondents for New Form:* 1,016.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 3,048 hours.

*Comment is Invited:* Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

**Christopher Coppenbarger,**

*Director, Grants and Agreement Policy.*

[FR Doc. 2022-09105 Filed 4-27-22; 8:45 am]

**BILLING CODE 3411-15-P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of virtual business meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Webex at 12:00 p.m. ET on Tuesday, May 17, 2022, to discuss their report on Legal Financial Obligations in the state.

**DATES:** The meeting will take place on Tuesday, May 17, 2022, from 12:00 p.m.—1:30 p.m. ET.

*Link to Join (Audio/Visual):* <https://tinyurl.com/f4duk4tf>.

*Telephone (Audio Only):* Dial (800) 360-9505 USA Toll Free; Access code: 2761 845 7469.

**FOR FURTHER INFORMATION CONTACT:** Victoria Moreno, DFO, at [vmoreno@usccr.gov](mailto:vmoreno@usccr.gov) or (434) 515-0204.

#### SUPPLEMENTARY INFORMATION:

Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877-8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email [vmoreno@usccr.gov](mailto:vmoreno@usccr.gov) at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at [lschiller@usccr.gov](mailto:lschiller@usccr.gov). Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353-8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the

Regional Programs Coordination Unit at the above phone number.

### Agenda

- I. Welcome & Roll Call
- II. Committee Discussion
- III. Public Comment
- IV. Next Steps
- V. Adjournment

Dated: April 22, 2022.

David Mussatt,

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2022-09051 Filed 4-27-22; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Census Bureau

#### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Annual Survey of School System Finances

**AGENCY:** Census Bureau, Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment on the proposed revision of the Annual Survey of School System Finances, prior to the submission of the information collection request (ICR) to OMB for approval.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before June 27, 2022.

**ADDRESSES:** Interested persons are invited to submit written comments by email to [Thomas.J.Smith@census.gov](mailto:Thomas.J.Smith@census.gov). Please reference Annual Survey of School System Finances in the subject line of your comments. You may also submit comments, identified by Docket Number USBC-2022-0007, to the Federal e-Rulemaking Portal: <http://www.regulations.gov>. All comments received are part of the public record. No comments will be posted to <http://www.regulations.gov> for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example,

name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or specific questions related to collection activities should be directed to Stephen Wheeler, Survey Statistician, Education Finance Branch, 301-763-9950, and [Stephen.Wheeler@census.gov](mailto:Stephen.Wheeler@census.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The U.S. Census Bureau plans to continue the current Office of Management and Budget clearance for the Annual Survey of School System Finances with revisions. The Annual Survey of School System Finances is the only comprehensive source of pre-kindergarten through 12th grade public elementary-secondary school system finance data collected on a nationwide scale using uniform definitions, concepts, and procedures. The collection covers the revenues, expenditures, debt, and assets of all public elementary-secondary school systems. This data collection has been cosponsored by and coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school finance data.

Fiscal data provided by respondents' aid data users in measuring the effectiveness of resource allocation. The products of this data collection make it possible for data users to search a single database to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Elementary-secondary education related spending is the single largest financial activity of state and local governments. Education finance statistics provided by the Census Bureau allow for analyses of how public elementary-secondary school systems receive their funding and how they are spending their funds.

The Annual Survey of School System Finances was revised for the fiscal year (FY) 2020 collection to include 12 new data items in response to the COVID-19 pandemic. Six revenue data items and six expenditure items were added to the survey to collect financial information from school systems concerning the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. The survey was then revised again for the FY

2021 collection in response to new legislation passed due to the COVID-19 pandemic, including the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) and the American Rescue Plan (ARP). Four new revenue items were added to the survey to collect financial data based on these two new legislative acts and two obsolete revenue items added in FY 2020 in response to the COVID-19 pandemic were removed from the survey. Two new expenditure items were also added to expand the scope of financial data collected concerning COVID-19 federal assistance funds.

This proposed revision to the Annual Survey of School System Finances is to further expand the collection of expenditure data for COVID-19 federal assistance funds. The CARES Act of 2020 established several relief funds that would be made available to school systems, including the Elementary and Secondary School Emergency Relief (ESSER) Fund, the Governor's Emergency Education Relief (GEER) Fund, and the Coronavirus Relief Fund (CRF). Subsequent legislation such as the CRRSA and the ARP further funded these sources and established additional funds made available to school systems, including the ARP Act Coronavirus State and Local Fiscal Recovery Funds. In response to these various funds being established and utilized by school systems, 21 new data items will be added to the survey to collect data on expenditures from these funding sources. Three data items collecting data for current expenditures, instructional expenditures, and capital outlay expenditures will be added for seven different sources of funds for a total of 21 new data items.

As a result of these 21 new data items being added to the survey, an increase in the total burden hours and estimated time per response for the primary survey form (F-33) is expected compared to prior survey collections. A slight decrease in the number of supplemental respondents is also expected in future collections due to school system consolidations, mergers, and other factors affecting the composition of school systems in states where supplemental debt and asset data is collected. This will partially offset some of the increase in total burden hours as a result of the 21 new items collected on the survey; however, an overall increase in total burden hours is still expected.

##### II. Method of Collection

A letter is mailed electronically at the beginning of each survey period to solicit the assistance of the state

education agencies in the 50 states and the District of Columbia. This letter officially announces the opening of the data collection period and requests some administrative data, such as their estimated date of submission, any change to the reporting format from prior year, and updated contact information for the state coordinator for the survey.

The survey form (F-33) contains item descriptions and definitions of the elementary-secondary education finance items collected jointly by the Census Bureau and NCES. It is used primarily as a worksheet and instruction guide by the state education agencies providing school finance data centrally for the school systems in their respective states. The Census Bureau collects almost all the finance data for local school systems from state education agency databases through central collection arrangements with the state education agencies. The states transfer this information in electronic format over the internet via file transfer protocol. The Census Bureau has also facilitated central collection of school system finance data by accepting data in multiple formats.

Supplemental forms are sent to local school systems in states where the state education agency cannot centrally provide information on assets (F-33-L1), indebtedness (F-33-L2), or both (F-33-L3). School systems have the option of completing a paper form to mail back to the Census Bureau or completing the survey using an online web application.

### III. Data

*OMB Control Number:* 0607-0700.

*Form Number(s):* F-33, Supplemental forms: F-33-L1, F-33-L2 and F-33-L3.

*Type of Review:* Regular submission, Request for a Revision of a Currently Approved Collection.

*Affected Public:* State and local governments.

*Estimated Number of Respondents:* F-33: 51, Supplemental: 3426.

*Estimated Time per Response:* F-33: 70 hours, 45 minutes, Supplemental: 15 minutes.

*Estimated Total Annual Burden Hours:* 4465.

*Estimated Total Annual Cost to Public:* \$0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Census: Title 13 U.S.C. Sections 8(b), 161, and 182. NCES: Title 20 U.S.C. Sections 9543-44.

### IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include, or summarize, each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022-09104 Filed 4-27-22; 8:45 am]

**BILLING CODE 3510-07-P**

### DEPARTMENT OF COMMERCE

#### **Agency Information Collection Activities; Withdrawal of Prior Notice and Proposed Submission of Information Collection for OMB Review; Comment Request; Medical Exception Request**

The Department of Commerce (Department) published a notice in the **Federal Register** of its intent to request that the Office of Management and Budget (OMB) extend approval, without change, under the Paperwork Reduction Act (PRA), to a collection of information for its employees to request a medical exception to the COVID-19 vaccination requirement on January 25, 2022. That notice was withdrawn in light of the January 21, 2022 nationwide preliminary injunction enjoining implementation and enforcement of the federal employee vaccination

requirement pursuant to the President's Executive Order 14043 of September 9, 2021, "Requiring Coronavirus Disease 2019 Vaccination for Federal Employees." The Department sought comment on its new notice of intent to request that OMB approve, without change, under the PRA, a collection of information for its employees to request a medical exception to the COVID-19 vaccination requirement via the **Federal Register** on February 15, 2022, 87 FR 8561, during a 60-day comment period. This notice allows for an additional 30 days for public comments. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden.

*Agency:* Office of the Secretary, Commerce.

*Title:* Request for a Medical Exemption to the COVID-19 Vaccination Requirement Form.

*OMB Control Number:* 0690-0036.

*Form Number(s):* None.

*Type of Request:* Regular submission; Extension of an already approved collection.

*Estimated Number of Respondents:* 1,000.

*Estimated Time per Response:* 10 minutes.

*Estimated Total Annual Burden Hours:* 167.

*Needs and Uses:* Under Executive Order 14043, every Federal agency must "implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its federal employees, with exceptions only as required by law." In following this directive, the Department imposed a requirement that its employees must receive and submit proof of COVID-19 vaccination. As required by 29 U.S.C. 701 *et seq.* and 29 CFR part 1630, the Department allows an exception from the vaccination requirement for employees who demonstrate medical reasons or disabilities that would make the COVID-19 vaccine unsafe for them. To obtain this exception, employees can submit the *Request for Medical Exception to the COVID-19 Vaccination Requirement* form available from the Department's COVID-19 Information Hub. The Department uses the information on this form to verify employees' assertions that they are entitled to an exception to the COVID-19 vaccination requirement because of their medical or disability statuses.

*Affected Public:* Federal employees and medical providers.

*Legal Authority:* Executive Order (E.O.) 14043.

This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0690–0032.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022–09110 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–17–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on May 11, 2022, at 11:30 a.m., Eastern Daylight Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

#### Agenda

##### Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

##### Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at [Yvette.Springer@bis.doc.gov](mailto:Yvette.Springer@bis.doc.gov) no later than May 4, 2022.

To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of

public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 14, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Yvette Springer via email.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2022–09095 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Materials and Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials and Equipment Technical Advisory Committee will meet on May 12, 2022, 10:00 a.m., Eastern Daylight Time, via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

#### Agenda

##### Open Session

1. Opening Remarks and Introduction by BIS Senior Management.
2. Report from working groups.
3. Report by regime representatives.

##### Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10 (a)(1) and 10 (a)(3).

The open session will be accessible via teleconference on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at [Yvette.Springer@bis.doc.gov](mailto:Yvette.Springer@bis.doc.gov), no later than May 5, 2022.

To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any

time before or after the meeting.

However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 14, 2022, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. § 10(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, contact Yvette Springer via email.

**Yvette Springer,**

*Committee Liaison Officer.*

[FR Doc. 2022–09097 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–JT–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Advisory Committee on Earthquake Hazards Reduction Meeting

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee) will hold an open virtual meeting via web conference on Tuesday, August 23, 2022, from 1:00 p.m. to 4:00 p.m. and Wednesday, August 24, 2022, from 1:00 p.m. to 4:00 p.m. Eastern Time. The primary purpose of this meeting is for the Committee to review the activities of the National Earthquake Hazards Reduction Program (NEHRP). The agenda may change to accommodate Committee business. The final agenda and any meeting materials will be posted on the NEHRP website at <https://nehrp.gov/committees/meetings.htm>.

**DATES:** The ACEHR will meet on Tuesday, August 23, 2022, from 1:00 p.m. to 4:00 p.m. and Wednesday, August 24, 2022, from 1:00 p.m. to 4:00 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held via web conference. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Tina Faecke, Management and Program Analyst, NEHRP, Engineering Laboratory, NIST, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Ms. Faecke's email address is [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov) and her phone number is (301) 975–5911.

**SUPPLEMENTARY INFORMATION:** Authority: 42 U.S.C. 7704(a)(5) and the Federal Advisory Committee Act, as amended, 5 U.S.C. app. The Committee is currently composed of 12 members, appointed by the Director of NIST, who were selected for their established records of distinguished service in their professional community, their knowledge of issues affecting NEHRP, and to reflect the wide diversity of technical disciplines, competencies, and communities involved in earthquake hazards reduction. In addition, the Chairperson of the U.S. Geological Survey Scientific Earthquake Studies Advisory Committee serves as an ex-officio member of the Committee.

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. app., notice is hereby given that the ACEHR will meet on Tuesday, August 23, 2022, from 1:00 p.m. to 4:00 p.m. and Wednesday, August 24, 2022, from 1:00 p.m. to 4:00 p.m. Eastern Time. The meeting will be open to the public and will be held via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purpose of this meeting is for the Committee to review the activities of NEHRP. The agenda may change to accommodate Committee business. The final agenda and any meeting materials will be posted on the NEHRP website at <https://nehrrp.gov/committees/meetings.htm>.

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. This meeting will be recorded. Public comments can be provided via email or by web conference attendance. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to Tina Faecke at [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov) by 5:00 p.m. Eastern Time, Tuesday, August 16, 2022. Speakers who wish to expand upon their oral statements, those who

wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements electronically by email to [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov).

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Eastern Time, Tuesday, August 16, 2022. Please submit your full name, the organization you represent (if applicable), email address, and phone number to Tina Faecke at [tina.faecke@nist.gov](mailto:tina.faecke@nist.gov).

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2022–09113 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

[Docket Number: 220420–0100]

#### Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of modifications.

**SUMMARY:** This notice modifies the National Institute of Standards and Technology (NIST) Alternative Personnel Management System (APMS) published October 21, 1997 to allow NIST to implement a term appointment with a minimum duration of more than one year that may be extended up to six years, for research positions in the Scientific and Engineering (ZP) career path at the Pay Band III-level and above. These term appointments will be subject to a trial period that lasts the duration of the term (initial appointment including any subsequent extensions). This notice also modifies the APMS to allow NIST to convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition.

**DATES:** This notice is effective on April 28, 2022.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Essex W. Brown III, NIST Office of Human Resources Management, by telephone at (301) 975–3801 or by email at [essex.brown@nist.gov](mailto:essex.brown@nist.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with Public Law 99–574, the National Bureau of Standards Authorization Act for Fiscal Year 1987, the Office of Personnel Management

(OPM) approved a demonstration project plan, “Alternative Personnel Management System (APMS) at the National Institute of Standards and Technology (NIST),” and published the plan in the **Federal Register** on October 2, 1987 (52 FR 37082). The published demonstration project plan was modified twice, once to clarify certain NIST authorities (54 FR 21331, May 17, 1989) and once to revise the performance appraisal system and the pay administration system in order to better link pay with performance (55 FR 39220, September 25, 1990). The APMS was made permanent in Section 10 of the National Technology Transfer and Advancement Act of 1995, Public Law 104–113, 110 Stat. 775 (Mar. 7, 1996) (codified at 15 U.S.C. 275 note), and the project plan and subsequent amendments were consolidated in the final APMS plan, which was published in the **Federal Register** on October 21, 1997 (62 FR 54604). NIST published ten subsequent amendments to the final APMS plan: One on May 6, 2005 (70 FR 23996), which became effective upon publication in the **Federal Register**; one on July 15, 2008 (73 FR 40500), which became effective on October 1, 2008; one on July 21, 2009 (74 FR 35841), which became effective upon publication in the **Federal Register**; one on January 5, 2011 (76 FR 539), which became effective upon publication in the **Federal Register**; one on June 19, 2012 (77 FR 36485), which became effective upon publication in the **Federal Register**; one on August 13, 2012 (77 FR 48128), which became effective upon publication in the **Federal Register**; one on August 24, 2012 (77 FR 51518), which became effective upon publication in the **Federal Register**; one on September 24, 2015 (80 FR 57580), which became effective upon publication in the **Federal Register**; one on July 21, 2009 (74 FR 35843), which became effective upon publication in the **Federal Register**; and one on April 11, 2019 (84 FR 14654), which became effective upon publication in the **Federal Register**.

The APMS allows for modifications to be made as experience is gained, results are analyzed, and conclusions are reached on how the system is working. Through this notice, NIST recognizes a modification within the APMS plan that allows NIST to:

(a) Implement a term appointment, with a minimum duration of more than one year that may be extended up to six years, for research positions in the Scientific and Engineering (ZP) career path at the Pay Band III-level and above. These term appointments will be subject to a trial period that lasts the duration

of the term (initial appointment including any subsequent extensions).

(b) Convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition if all of the following are met—

(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service under this authority;

(4) the employee's performance under such term appointment was at least Contributor level (Level 3) or equivalent; and

(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

Conversion to a permanent position is not guaranteed even if the above conditions are met.

Dated:

**Del Brockett,**

*Chair, Personnel Management Board.*

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### III. Language Inserted Into the APMS Plan

## I. Executive Summary

The National Institute of Standards and Technology's (NIST) Alternative Personnel Management System (APMS) is designed to: (1) Improve hiring and allow NIST to compete more effectively for high-quality researchers through direct hiring, selective use of higher-entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff through higher pay potential, a pay-for-performance system, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role in personnel management through delegation of personnel authorities; and (4) increase the efficiency of personnel systems through installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and

paperwork in classification, hiring, and other personnel systems, and through automation (52 FR 37082, October 2, 1987). Since implementing the APMS, NIST is more competitive for talent, and NIST managers report significantly more authority to make decisions concerning employee pay.

As provided in this notice, NIST is modifying its APMS to allow NIST to (a) implement a new appointment mechanism that allows NIST to hire individuals on a term appointment, with a minimum duration of more than one year that may be extended up to six years, and (b) convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition. These authorizations will provide NIST with greater flexibility to shape the workforce based on research program changes by permitting term appointments of longer duration and authorizing a streamlined way to convert term employees to permanent status. In addition, they will enhance NIST's ability to recruit and retain highly skilled individuals in mission-critical occupations and provide greater opportunities for term employees in pursuing their career objectives.

The positions for which this term appointment will be utilized include research positions within the Scientific and Engineering (ZP) career path at the Pay Band III-level and above.

## II. Basis for Recognition of OPM Authorization in the APMS Plan

At NIST, research projects routinely require highly technical expertise in a particular scientific field. Depending on programmatic shifts in research, administrative priorities, and technological advances, at times, such projects continue for a short duration, while, at other times, such projects must continue for years before their successful completion. To address such programmatic shifts and changing priorities, NIST would benefit from the opportunity to hire individuals on a term appointment with a minimum duration of more than one year that may be extended up to six years and the ability to convert the individuals to a career or career-conditional appointment non-competitively. As research priorities shift with external changes, it is critical that NIST have the ability to align its human capital with the essential expertise required.

Title 5, CFR 316.301 ("Term employment/Purpose and duration") allows agencies to make a term appointment for a period of one to four years where the need for an employee's

services is not permanent. This section also provides OPM with the authority to "authorize exceptions beyond the 4-year limit when the extension is clearly justified and is consistent with applicable statutory provisions." The authority found in 5 CFR 316.301 does not adequately fulfill NIST's research needs, as when changes in national research priorities occur, NIST must address them quickly and efficiently and manage human capital accordingly. To fulfill these needs, NIST is modifying its APMS to utilize a term appointment, with a minimum duration of more than one year that may be extended up to six years, for research positions in the Scientific and Engineering (ZP) career path at the Pay Band III-level and above, which includes the ability to convert individuals hired under this authority to a career or career-conditional appointment non-competitively. These term appointments will be subject to a trial period that lasts the duration of the term (initial appointment including any subsequent extensions).

## III. Authorities and Waiver of Laws and Regulations Required

Public Law 99-574 gave NIST the authority to experiment with several specific personnel system innovations which are otherwise prohibited by law and regulations. NIST is waiving the following laws and regulations:

- 5 Code of Federal Regulations 316.301, Purpose and Duration
- 5 Code of Federal Regulations 316.304, Trial Period; when required (waived only for positions in the Scientific and Engineering Career path)
- 5 Code of Federal Regulations Part 322, or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service (waived to the extent inconsistent with APMS).

## IV. Language Inserted Into the APMS Plan

The APMS at NIST, published in the **Federal Register** on October 21, 1997 (62 FR 54604), is amended as follows:

After the section titled "Promotion," a new section titled "Term Appointment for ZP Positions" will be inserted with the following:

### *Term Appointment for ZP Positions*

NIST may hire individuals on term appointments with a minimum duration of more than one year that may be extended up to six years to research positions in the Scientific and Engineering (ZP) career path at the Pay Band III or above. These term

appointments will be subject to a trial period that lasts the duration of the term (initial appointment including any subsequent extensions). NIST may also convert an employee serving under a term appointment under this authority to a permanent appointment in the competitive service without further competition if all of the following are met—

(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

(4) the employee's performance under such term appointment was at least Contributor level (Level 3) or equivalent; and

(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

Conversion to a permanent position is not guaranteed even if the above conditions are met.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2022–08877 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Availability of Final Evaluation Findings of State Coastal Programs and National Estuarine Research Reserves

**AGENCY:** Office for Coastal Management (OCM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of availability of evaluation findings.

**SUMMARY:** Notice is hereby given of the availability of final evaluation findings for three state coastal programs, Illinois, Indiana, and Massachusetts, and two national estuarine research reserves, Apalachicola and Delaware, under

Sections 312 and 315 of the Coastal Zone Management Act (CZMA).

**ADDRESSES:** Copies of these final evaluation findings may be downloaded at [https://coast.noaa.gov/czm/evaluations/evaluation\\_findings/index.html](https://coast.noaa.gov/czm/evaluations/evaluation_findings/index.html) or by submitting a written request to Michael Migliori at [Michael.Migliori@noaa.gov](mailto:Michael.Migliori@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Michael Migliori, Lead Evaluator, NOAA Office for Coastal Management, by phone at (443) 332–8936 or email at [Michael.Migliori@noaa.gov](mailto:Michael.Migliori@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The NOAA Office for Coastal Management has completed the coastal zone management program evaluations for the States of Illinois, Indiana, and Massachusetts. The states were found to be implementing and enforcing their federally approved coastal zone management programs, addressing the national coastal management objectives identified in CZMA Section 303(2), and adhering to the programmatic terms of their financial assistance awards. In addition, the NOAA Office for Coastal Management has completed the national estuarine research reserve evaluations for Apalachicola and Delaware. The reserves were found to be adhering to programmatic requirements of the National Estuarine Research Reserve System. NOAA published in the **Federal Register** notices for public meetings and opportunities to submit public comments on the evaluation of these state coastal zone management programs (CZMPs) and national estuarine research reserves (NERRs). See 85 FR 56220 (Sep. 11, 2020) (Illinois CZMP); 86 FR 10034 (Feb. 18, 2021) (Indiana CZMP); 86 FR 14080 (March 12, 2021) (Massachusetts CZMP); 86 FR 33662 (Jun. 25, 2021) (Apalachicola NERR); and 85 FR 56219 (Sept. 11, 2020) (Delaware NERR). Public comments received are addressed in the final evaluation findings.

*Authority:* 16 U.S.C. 1458 and 1461(f); 15 CFR 921.40 and 923.133(b)(7).

**Keelin Kuipers,**

*Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2022–09096 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–JE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XB994]

#### Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) will hold a public meeting of its Mackerel, Squid, and Butterfish (MSB) Committee. See **SUPPLEMENTARY INFORMATION** for agenda details.

**DATES:** The meeting will be held on Monday, May 16, 2022, from 9 a.m. until 1 p.m.

**ADDRESSES:** The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at [www.mafmc.org](http://www.mafmc.org).

*Council address:* Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; [www.mafmc.org](http://www.mafmc.org).

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

**SUPPLEMENTARY INFORMATION:** The Council's Mackerel, Squid, and Butterfish (MSB) Committee will develop recommendations for the Council regarding Atlantic mackerel rebuilding and associated 2023 specifications, including the fishery's river herring and shad cap.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2022.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2022–09149 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648–XB925]

**Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of SEDAR 68OA (Operational Assessment) Life History Topical Working Group Data Recommendations Webinar for Gulf of Mexico Scamp Grouper.

**SUMMARY:** The SEDAR 68OA assessment of Gulf of Mexico scamp grouper will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 68OA recommendations webinar for the Life History Topical Working Group will be held May 16, 2022, from 10 a.m. to 12 p.m. Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

**ADDRESSES:** The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: [Julie.neer@safmc.net](mailto:Julie.neer@safmc.net)

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data

Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the webinar are as follows:

Participants will discuss what life history data may be available for use in the Operational Assessment of Gulf of Mexico scamp grouper and make final recommendations.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each webinar.

**Note:** The times and sequence specified in this agenda are subject to change.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2022.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2022–09127 Filed 4–27–22; 8:45 am]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648–XB991]

**New England Fishery Management Council; Public Meeting**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel and Plan Development Team (PDT) on Tuesday, May 17, 2022 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, May 17, 2022 at 9:30 a.m.

**ADDRESSES:** This meeting will be held at the Four Points by Sheraton, One Audubon Road, Wakefield, MA 01880; telephone: (781) 245–9300.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:****Agenda**

The Herring Advisory Panel and PDT will meet to continue development of Framework 7 to the Atlantic Herring Fishery Management Plan, an action to protect adult spawning of Atlantic herring on Georges Bank. They will also review and recommend annual herring research priorities. The Advisor and PDT will review draft Herring PDT memo to the Groundfish PDT related to sub-ACLs of Georges Bank haddock for the mid-water trawl herring fishery in upcoming groundfish specifications. They will update on Industry Funded Monitoring Program for the Atlantic herring fishery. Other business will be discussed if necessary.

Although non-emergency issues not contained on this agenda may come

before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2022.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2022-09147 Filed 4-27-22; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB993]

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of hybrid meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council) Crab Plan Team will meet May 16, 2022, through May 19, 2022.

**DATES:** The meeting will be held on Monday, May 16, 2022 through Thursday, May 19, 2022, from 8 a.m. to 4 p.m., Alaska Time.

**ADDRESSES:** The meeting will be a hybrid meeting. Attend in-person in the Dillingham/Katmai Room at the Anchorage Hilton Hotel, 500 W 3rd Ave., Anchorage, AK 99501 or join online through the link at <https://meetings.npfmc.org/Meeting/Details/2913>.

*Council address:* North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501-2252; telephone: (907) 271-2809.

Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

### FOR FURTHER INFORMATION CONTACT:

Sarah Rheinsmith, Council staff; phone: (907) 271-2809; email:

[sarah.rheinsmith@noaa.gov](mailto:sarah.rheinsmith@noaa.gov). For technical support please contact our admin Council staff, email: [npfmc.admin@noaa.gov](mailto:npfmc.admin@noaa.gov).

### SUPPLEMENTARY INFORMATION:

#### Agenda

*Monday, May 16, 2022 Through Thursday, May 19, 2022*

The agenda will include: (a) Survey updates for corner stations; (b) Aleutian Island Golden King Crab (AIGKC) final assessment and stock status; (c) Snow Crab spatial assessment model; (d) Climate Change and Snow Crab; (e) Bristol Bay Red King Crab (BBRKC) proposed model runs and Risk Tables; (f) Snow Crab IBM model update; (g) BBRKC resampling updates; (h) Snow Crab updates and continued explorations on what happened to the stock; (i) Snow Crab-proposed model runs and Rebuilding plan; (j) Bering Sea Fisheries Research Foundation (BSFRF) survey catchability/selectivity; (k) Essential Fish Habitat (EFH) Fishing Effects Update; (l) Tanner Crab, Pribilof Island Red King Crab (PIRKC) and Saint Matthews Blue King Crab (SMBKC) proposed model runs; (m) BBRKC Discussion Paper; (n) Modifying timing of Crab Assessments; (o) BSFRF update; and (p) additional topics. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/2913> prior to the meeting, along with meeting materials.

### Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: <https://meetings.npfmc.org/Meeting/Details/2913>. If you are attending the meeting in-person please note that all attendees will be required to wear a mask.

### Public Comment

Public comment letters will be accepted and should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/2913>.

*Authority:* 16 U.S.C. 1801 *et seq.*

Dated: April 25, 2022.

**Tracey L. Thompson,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2022-09148 Filed 4-27-22; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

[Docket No.: PTO-P-2022-0002]

### Filing Patent Applications in DOCX Format

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) recently announced a delay in the effective date of the surcharge fee for certain patent applications that are not filed in DOCX format until January 1, 2023. During the period before the non-DOCX filing surcharge fee becomes effective, the USPTO is encouraging applicants to begin filing patent applications in DOCX format. To address concerns some applicants have raised and to allow applicants to get acclimated to the process of filing applications in DOCX format, the USPTO is providing applicants with the option, on a temporary basis, to submit an applicant-generated PDF version of the application along with the DOCX file(s) when filing an application in Patent Center.

### DATES:

*Applicable date:* April 28, 2022.

*Duration:* The option to submit an applicant-generated PDF of the application along with the DOCX file(s) when filing an application in Patent Center, as discussed in this notice, will be available through December 31, 2022.

### FOR FURTHER INFORMATION CONTACT:

Mark O. Polutta, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7709; or Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7727.

For technical questions about submitting documents in DOCX format, please contact the Patent Electronic Business Center (EBC) at 1-877-217-9197 (toll-free), 571-272-4100 (local), or [ebc@uspto.gov](mailto:ebc@uspto.gov). The EBC is open from 6 a.m. to midnight ET, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The USPTO published a final rule in the **Federal Register** that included a new non-DOCX filing surcharge fee, set forth

in 37 CFR 1.16(u), with an effective date of January 1, 2022. *See* Setting and Adjusting Patent Fees During Fiscal Year 2020, 85 FR 46932 (August 3, 2020) (Patent Fee Setting final rule). This surcharge fee is due for any non-provisional utility application filed under 35 U.S.C. 111 (other than a reissue application) on or after the effective date, when the specification, claims, and/or abstract do not conform to the USPTO requirements for submission in DOCX format. The USPTO recently announced it was delaying the effective date of this fee until January 1, 2023. *See* Setting and Adjusting Patent Fees During Fiscal Year 2020, 86 FR 66192 (Nov. 22, 2021). This will enable the USPTO to perform additional monitoring and evaluating of its information technology systems, and to give applicants more time to adjust to filing patent applications in DOCX format.

The USPTO continues to work with its stakeholders to transition to the DOCX format. Through this notice, the USPTO is providing applicants with the option to submit an applicant-generated PDF of the application along with the validated DOCX file(s) when filing an application in Patent Center, from the effective date of this notice through December 31, 2022 (the temporary period). This option will not be available for applications filed via EFS-Web. This will allow applicants to gain confidence in the reliability and accuracy of the USPTO system when filing applications in DOCX format, and safeguard the applicant should any conversion discrepancies have taken place.

Patent Center is the new tool for the electronic filing and management of patent applications that will eventually replace EFS-Web and the Patent Application Information Retrieval (PAIR) system. Patent Center offers a number of benefits to applicants. For example, when filing documents in DOCX in Patent Center, applicants do not have to manually separate the sections of the document into the specification, claims, and abstract. Additional information on Patent Center is available at [www.uspto.gov/patents/apply/patent-center](http://www.uspto.gov/patents/apply/patent-center).

The DOCX User Guide posted on the USPTO website explains that during the filing process, an applicant initially uploads a DOCX file(s) containing the specification, claims, and abstract. The DOCX file(s) undergoes preliminary validation, in which metadata is removed, non-substantive changes (*e.g.*, acceptance of track changes in initial filings, removal of comments and bookmarks) may be made, and a

validated DOCX file(s) is created. In addition, a feedback document is generated to provide warnings, identify common errors, such as formatting errors, and provide instant feedback to the applicant to prevent unnecessary delays in processing. In order to improve processing efficiency and provide an enhanced user experience for stakeholders, the USPTO system currently creates a consistently formatted PDF version of the specification, claims, and abstract during the filing process that will be made available both before filing and in the application file after the application has been filed. By transitioning to DOCX the applicant benefits from improved application quality and management as described at: <https://www.uspto.gov/patents/docx>. The USPTO continues to evaluate how best to implement changes to the format of application files used during examination based on DOCX submissions.

The USPTO previously published a notice which sets forth that the USPTO considers the validated DOCX file(s) submitted by the applicant to be the authoritative document and that applicants may rely on the validated DOCX file(s) as the source or evidentiary copy of the application to make any corrections to the documents in the application file. *See* Submitting Patent Applications in Structured Text Format and Reliance on the Text Version as the Source or Evidentiary Copy, 86 FR 29571 (Jun. 2, 2021). Thus, applicants already have the ability to rely on the validated DOCX file(s) they submitted to correct any errors or discrepancies that result from the USPTO's conversion of the DOCX file(s) to a PDF(s). If there is an error or discrepancy in the record that resulted from filing an application in DOCX format, the applicant should promptly notify the EBC at 1-866-217-9197 (toll-free), 571-272-4100 (local), or [ebc@uspto.gov](mailto:ebc@uspto.gov) so the EBC can investigate the issue(s).

Applicants who choose to submit an applicant-generated PDF with the validated DOCX file(s) when filing an application in Patent Center during the temporary period will not have to pay any additional fees, such as an application size fee, as a result of filing the applicant-generated PDF, and, on petition, will be able to rely on the applicant-generated PDF if a discrepancy occurs during the filing process. Please note that if an applicant makes changes to the DOCX file(s) prior to filing the application as a result of the validation process, then the applicant should ensure that the applicant-generated PDF corresponds to the

revised DOCX file(s). Once the non-DOCX filing surcharge fee becomes effective on January 1, 2023, applicants who submit an applicant-generated PDF with the validated DOCX file(s) will need to pay the non-DOCX filing surcharge fee and any other additional fees as a result of filing the applicant-generated PDF. As December 31, 2022, approaches, the USPTO will evaluate whether there is a need to extend the temporary period beyond December 31, 2022, and will inform the public of any extension of the temporary period.

Under this temporary new process of allowing applicant to optionally submit the applicant-generated PDF, the USPTO has created a new document description for the optional applicant-generated PDF submitted with the DOCX file(s) during the temporary period. This new document description is "Auxiliary PDF of application," and the corresponding document code is AUX.PDF. If filing an applicant-generated PDF in Patent Center, it should be a single PDF and contain all the sections being filed in DOCX format. Use of this document description by applicants will facilitate recognition of the document in the application file and will avoid confusion with the specification, claims, and abstract that are to be used during examination and publishing.

As stated above, applicants can rely on the validated DOCX file(s) as the source or evidentiary copy to make corrections to the record when any discrepancies are identified between the source or evidentiary copy and the documents the USPTO has converted. Applicants may need to file a petition under 37 CFR 1.181 to make a correction to the record, which is supported by the validated DOCX file(s). *See* 86 FR 29571. However, if a correction to the record is needed due to an error or discrepancy that is not supported by the validated DOCX file(s), but is instead only supported by the applicant-generated PDF filed during the temporary period, the applicant should file a petition under 37 CFR 1.182 that identifies how the applicant-generated PDF supports the requested correction to the record. In addition, such a petition under 37 CFR 1.182 must be accompanied by an amendment to the specification, claims, or abstract to correct the record as desired, unless such an amendment was previously submitted. Amendments to the application must comply with 37 CFR 1.121. The USPTO will waive the fee under 37 CFR 1.17(f) for this petition when an applicant is relying on an applicant-generated PDF, filed in Patent Center during the temporary period, as

the source to make a correction to the record. As stated above, this will allow applicants to gain confidence in the reliability and accuracy of the USPTO system when filing applications in DOCX format, and safeguard the applicant should any conversion discrepancies have taken place.

The applicant-generated PDF that accompanies a DOCX filing will not become part of the permanent record unless a petition is filed requesting the USPTO to correct the record in view of the applicant-generated PDF. In the absence of such a petition, the USPTO will dispose of the applicant-generated PDF, and all copies thereof, after a retention period of at least three years after the patent grant or abandonment of the application.

Applicants are strongly encouraged to review their applications, including the USPTO-generated PDF, shortly after filing the application to identify any errors or discrepancies in the record, as discussed above. The applicant should file any necessary petition to correct the record early in prosecution and promptly after discovering any errors or discrepancies.

As an alternative to filing a petition, applicants may be able to correct discrepancies resulting from filing an application in DOCX format by relying on a proper priority or benefit claim. A proper priority or benefit claim under 37 CFR 1.55 or 37 CFR 1.78 to a prior-filed application that is present on the filing date of the application is considered an incorporation by reference of the prior-filed application as to any inadvertently omitted portion of the specification or drawing(s), subject to the conditions and requirements of 37 CFR 1.57(b). Therefore, in some instances, discrepancies resulting from filing an application in DOCX format may be addressed by amending portions of the specification pursuant to the incorporation by reference provisions of 37 CFR 1.57(b), in lieu of a petition. The amendment should be identified as an amendment under 37 CFR 1.57(b), and it must comply with 37 CFR 1.57(b) and 37 CFR 1.121.

The USPTO continues to host training sessions on filing documents in DOCX. Information on filing application documents in DOCX, as well as information on how to submit an applicant-generated PDF and a link to

the DOCX training sessions, is available at [www.uspto.gov/patents/docx](http://www.uspto.gov/patents/docx).

**Kathi Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2022-09027 Filed 4-27-22; 8:45 am]

**BILLING CODE 3510-16-P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Extend Collection 3038-0052: Core Principles & Other Requirements for DCMs

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (“Commission” or “CFTC”) is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on reporting requirements relating to collections of information related to designated contract markets (“DCMs”) under the Commission’s regulations.

**DATES:** Comments must be submitted on or before June 27, 2022.

**ADDRESSES:** You may submit comments, identified by “OMB Control No. 3038-0052” by any of the following methods:

- The Agency’s website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.

- **Mail:** Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

- **Hand Delivery/Courier:** Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Roger Smith, Associate Chief Counsel, Division of Market Oversight, Commodity Futures Trading

Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; 202-418-5344; email: [rsmith@cftc.gov](mailto:rsmith@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, 44 U.S.C. 3501 *et seq.*, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the existing collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.<sup>1</sup>

**Title:** Core Principles & Other Requirements for DCMs (OMB Control No. 3038-0052). This is a request for a revision and extension of a currently approved information collection.

**Abstract:** The regulations governing designated contract markets (“DCMs”) originally were adopted pursuant to the Commodity Futures Modernization Act of 2000, which amended section 5 of the Commodity Exchange Act (“CEA”) to impose requirements concerning the registration<sup>2</sup> and operation of DCMs.<sup>3</sup> The DCM statutory framework subsequently was revised as a result of further amendments to the CEA under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).<sup>4</sup> Part 38 of the Commission’s regulations governs the activities of DCMs. The information collected pursuant to Part 38 is

<sup>1</sup> The OMB control numbers for the CFTC regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981).

<sup>2</sup> The Commission notes that the terms “registered” and “designated” are used interchangeably and mean the same thing.

<sup>3</sup> 7 U.S.C. 1 *et seq.*

<sup>4</sup> See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, tit. VII, 124 Stat. 1376 (2010) (codified as amended in various sections of 7 U.S.C.), available at <https://www.cftc.gov/sites/default/files/idc/groups/public/@lrfederalregister/documents/file/2013-12242a.pdf>.

necessary for the Commission to evaluate whether entities operating as, or applying to become, DCMs comply with the Part 38 and other Commission requirements and the CEA's statutory requirements.

Collection 3038–0052 was created in response to the Part 38 regulatory requirements for DCMs. In general, OMB Control Number 3038–0052 covers all information collections in Part 38, including Subpart A and the DCM core principles (*i.e.*, Subparts B through X) as well as the related appendices thereto (*i.e.*, Appendix A—Form DCM; Appendix B—Guidance on, and Acceptable Practices in, Compliance with Core Principles; and Appendix C—Demonstration of Compliance That a Contract Is Not Readily Susceptible to Manipulation). Further, this OMB control number, 3038–0052, also includes all information collections related to Part 9 (“Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions”) to the extent Part 9 is applicable to DCMs.<sup>5</sup> This collection also includes the requirements under regulation 38.251(g) in connection with the reporting of specific market disruption events to the Commission.

This OMB control number, 3038–0052, also includes collections under regulation 1.52 regarding the Enhanced Protections Afforded Customer and Customer Funds Held by Futures Clearing Merchants and Derivatives Clearing Organizations. Commission regulation 1.52 imposes information collection burdens on DCMs.<sup>6</sup>

Additionally, this OMB control number, 3038–0052, also includes collections under regulation 38.1051(n) that relate to system safeguards and cybersecurity testing requirements and requires DCMs to provide the Commission with annual trading volume information.

For the majority of collections under OMB control number 3038–0052, the Commission notes that the number of registered, active DCMs has increased from 14 to 16. This increase in the

number of registered DCMs will increase the total information collection burdens for OMB control number 3038–0052 as shown below.<sup>7</sup>

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.<sup>8</sup>

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <https://www.cftc.gov> that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

**Burden Statement:** The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden

for this collection is estimated to be as follows:

- *Regulatory & Core Principle Compliance Part 38 (Subparts A–W) and related Appendices:*

*Estimated Number of Respondents:*

16.

*Estimated Average Burden Hours per Respondent:* 330.

*Estimated Total Annual Burden Hours:* 5,280.

*Frequency of Collection:* Per Trading Day.

- *§ 1.52 (Examination Program and Audit of Program):*

*Estimated Number of Respondents:*

16.

*Estimated Average Burden Hours per Respondent:* 49.

*Estimated Total Annual Burden Hours:* 784.

*Frequency of Collection:* Annually.

- *Core Principle 16 “Conflicts of Interest” and Related Acceptable Practices (Annual Assessment Report):*

*Estimated Number of Respondents:*

16.

*Estimated Average Burden Hours per Respondent:* 70.

*Estimated Total Annual Burden Hours:* 1,120.

*Frequency of Collection:* Annually.

- *§ 38.1101 et al. (Quarterly Financial Reports):*

*Estimated Number of Respondents:*

16.

*Estimated Average Burden Hours per Respondent:* 40.

*Estimated Total Annual Burden Hours:* 640.

*Frequency of Collection:* Quarterly.

- *§ 38.1051(n) (Required Production of Annual Trading Volume):*

*Estimated Number of Respondents:*

16.

*Estimated Average Burden Hours per Respondent:* 0.5.

*Estimated Total Annual Burden Hours:* 8.

*Frequency of Collection:* Annually.

- *§ 38.3 and Form DCM (DCM*

*Registration):*

*Estimated Number of Respondents:* 4.

*Estimated Average Burden Hours per Respondent:* 300.

*Estimated Total Annual Burden Hours:* 1,200 hours.

*Frequency of Collection:* As applicable.

- *§ 38.251(g) (Required Market Disruptions Notifications):*

*Estimated Number of Respondents:*

16.

*Estimated Average Burden Hours per Respondent:* 66.4 hours.

*Estimated Total Annual Burden Hours:* 1,062.4 hours.

*Frequency of Collection:* As needed.

- *§§ 38.950 and 38.951*

*(Recordkeeping Related to Compliance with 38.251(g)):*

<sup>5</sup> Section 38.707 specifically references Part 9. Accordingly, the Commission's previous information collection estimates under Part 38 have included compliance with Part 9 to the extent applicable to DCMs. The Commission is referencing DCMs' compliance obligations with Part 9 for the sake of clarity, but this does not represent a new or modified information collection.

<sup>6</sup> The Commission notes that § 38.605 incorporates and references § 1.52. Accordingly, the Commission's previous information collection estimates under Part 38 have included compliance with § 1.52 to the extent applicable to DCMs. The Commission is referencing DCMs' compliance obligations with § 1.52 for the sake of clarity, but this does not represent a new or modified information collection.

<sup>7</sup> For the collections related to Commission regulation 38.251(g), the Commission notes that the number of registered, active DCMs has decreased from 17 to 16. This decrease is reflected below for collections related to Commission regulation 38.251(g). However, despite this decrease, the total information collection burdens for OMB control number 3038–0052 will increase.

<sup>8</sup> 17 CFR 145.9.

*Estimated Number of Respondents:* 16.  
*Estimated Average Burden Hours per Respondent:* 25 hours.

*Estimated Total Annual Burden Hours:* 400 hours.

*Frequency of Collection:* As needed.  
 • *Total Annual Burden for the Collection:* 10,494.4 hours.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: April 22, 2022.

**Robert Sidman,**

*Deputy Secretary of the Commission.*

[FR Doc. 2022-09014 Filed 4-27-22; 8:45 am]

**BILLING CODE 6351-01-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket Number DARS-2022-0010; OMB Control Number 0704-0574]

#### Information Collection Requirements; Defense Federal Acquisition Regulation Supplement; DFARS Part 215, Only One Offer and Related Clauses in DFARS 252

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. *DoD invites comments on:* Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through August 31, 2022. DoD proposes that OMB extend its approval for use for three additional years beyond the current expiration date.

**DATES:** DoD will consider all comments received by June 27, 2022.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704-0574, using any of the following methods:

○ *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704-0574 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. David E. Johnson, telephone 202-913-5764.

#### SUPPLEMENTARY INFORMATION:

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Part 215; Only One Offer and Related Clauses in DFARS 252; OMB Control Number 0704-0574.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.  
*Respondent's Obligation:* Required to obtain or retain benefits.

*Type of Request:* Extension of a currently approved collection.

*Frequency:* On occasion.

*Number of Respondents:* 2,691.

*Responses per Respondent:* 1.33, approximately.

*Annual Responses:* 3,593.

*Average Burden per Response:* 37.7 hours, approximately.

*Annual Burden Hours:* 135,330.

*Reporting Frequency:* On Occasion.

*Needs and Uses:* This information collection pertains to information that an offeror or contractor must submit to DoD if only one offer was received in response to a competitive solicitation, and the contracting officer must request certified cost or pricing data, to meet the standard for adequate price competition that is applicable to DoD. The Government requires this information in order to determine whether an offered price is fair and reasonable and to meet the statutory requirement for certified cost or pricing data. The contracting officer obtains this information through use of DFARS solicitation provisions 252.215-7008, Only One Offer, and DFARS 252.215-7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data. These provisions implement 10 U.S.C. 2306a.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2022-09039 Filed 4-27-22; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF EDUCATION

[Docket No.: ED-2022-SCC-0025]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Carl D. Perkins Career and Technical Education Act State Plan

**AGENCY:** Office of Career, Technical, and Adult Education (OCTAE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting "Department of Education" under "Currently Under Review," then check "Only Show ICR for Public Comment" checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Corinne Sauri, 202-245-6412.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the

burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Carl D. Perkins Career and Technical Education Act State Plan.

*OMB Control Number:* 1830–0029.

*Type of Review:* A revision of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Annual Responses:* 54.

*Total Estimated Number of Annual Burden Hours:* 1,620.

*Abstract:* This request is to revise the information collection that will expire on April 30, 2022. The Department requests to revise the collection tool for one year in order to gather State Plans and annual revisions under Perkins V and makes the following changes: This information collection solicits from all eligible States and outlying areas the State plans required under Title I of the Carl D. Perkins Career and Technical Education Act of 2006, as amended by the Strengthening Career and Technical Education for the 21st Century (Perkins V).

The revision to this collection instrument removes the cover letter, removes the requirements and instructions related to submission of Perkins V State Plans in FY 2019 and FY 2020. The Department recognized that it would take time for eligible agencies to update their CTE systems, policies, and programs to align with the requirements of Perkins V after it was signed into law on July 31, 2018. As such, eligible agencies had the option of submitting a 1-Year Transition Plan in FY 2019 or a Perkins V State Plan that covered 5 years from FY 2019 to FY 2023. Some background information regarding the submission or original State Plans was maintained for historical context, but much of the information related to these original options is no longer relevant as states prepare annual revisions. This revision removes the requirement that eligible agencies submit local formula allocations as part of State Plan revisions in subsequent years. Local formula allocation information is collected annually as part of the OMB-approved Perkins V Consolidated Annual Report (CAR)—(OMB Control Number 1830–0569). The revised tool adds a budget line item related to the percent of funds made available to serve individuals in “other” State institutions. Perkins V requires that eligible agencies make funds available to serve

individuals in State institutions, such as (1) State correctional institutions, (2) juvenile justice facilities, and (3) educational institutions that serve individuals with disabilities. Some states provide funds to State institutions beyond the three types of institutions explicitly identified in Perkins V and therefore an additional “other” line item is needed to collect this information. The revised collection also changes references to fiscal years (FYs) to program years (PYs) on the section V.B State Determined Performance Levels (SDPL) Form to reduce confusion among grantees as they set SDPL targets that align to performance data that is ultimately reported based upon program year.

Dated: April 25, 2022.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022–09068 Filed 4–27–22; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0009]

### **Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Education Stabilization Fund—Governor’s Emergency Education Relief Fund (GEER I and GEER II) Recipient Data Collection Form**

**AGENCY:** Office of Elementary and Secondary Education (OESE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved collection.

**DATES:** Interested persons are invited to submit comments on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection

activities, please contact Gloria Tanner, (202) 453–5596.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public’s reporting burden. It also helps the public understand the Department’s information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Education Stabilization Fund—Governor’s Emergency Education Relief Fund (GEER I and GEER II) Recipient Data Collection Form.

*OMB Control Number:* 1810–0748.

*Type of Review:* Extension without change of a currently approved collection.

*Respondents/Affected Public:* State, Local, Tribal Governments; Private Sector.

*Total Estimated Number of Annual Responses:* 3,326.

*Total Estimated Number of Annual Burden Hours:* 40,612.

*Abstract:* Under the current unprecedented national health emergency, the legislative and executive branches of government have come together to offer relief to those individuals and industries affected by the COVID–19 virus under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) authorized on March 27, 2020, and expanded through the Coronavirus Response and Relief Supplemental Under the current unprecedented national health emergency, the

legislative and executive branches of government have come together to offer relief to those individuals and industries affected by the COVID-19 virus under the Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116–136) authorized on March 27, 2020, and expanded through the Coronavirus Response and Relief Supplemental Appropriations (CRRSA) Act, and the American Rescue Plan (ARP) Act. The Governor's Emergency Education Relief Fund (GEER Fund) awards grants to Governors (States) and Outlying Areas for the purpose of providing local educational agencies (LEAs), institutions of higher education, and other education-related entities with emergency assistance as a result of the coronavirus pandemic. This information collection includes annual reporting requirements to comply with the requirements of the GEER program and obtain information on how the funds were used by State and Local Education Agencies, institutions of higher education, and other education-related entities. On 2/10/2022, the Office of Management and Budget (OMB) approved the emergency collection which included two additional questions to address the expenditure of GEER funds directly by the Governor's office (or another entity, such as the SEA, designated as the administrator of the GEER fund by the Governor's office). The Department is now requesting approval for a three-year clearance. There is no change from the emergency collection except for clarifying changes. To view the recently approved questions, please refer to Attachment A.

Dated: April 25, 2022.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022–09054 Filed 4–27–22; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0055]

### **Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Grants Under the Minority Science and Engineering Improvement Program (MSEIP) (1894–0001)**

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved information collection.

**DATES:** Interested persons are invited to submit comments on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this information collection request by selecting “Department of Education” under “Currently Under Review,” then check “Only Show ICR for Public Comment” checkbox. Comments may also be sent to [ICDocketmgr@ed.gov](mailto:ICDocketmgr@ed.gov).

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Bernadette Hence, 202–453–7913.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

**Title of Collection:** Application Package for Grants Under the Minority Science and Engineering Improvement Program (MSEIP) (1894–0001).

**OMB Control Number:** 1840–0109.

**Type of Review:** An extension without change of a currently approved collection.

**Respondents/Affected Public:** State, Local, and Tribal Governments; Private Sector.

**Total Estimated Number of Annual Responses:** 150.

**Total Estimated Number of Annual Burden Hours:** 24,000.

**Abstract:** The purpose of the Minority Science and Engineering Improvement Program (MSEIP) is to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the flow of underrepresented ethnic minorities, particularly minority women, into scientific and technological careers. MSEIP supports the Federal Government's efforts to improve and expand the scientific and technological capacity of the United States and to support its technological and economic competitiveness.

This application package includes program background, application instructions, and forms needed to submit a complete application to the Department of Education.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: April 25, 2022.

**Kun Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022–09144 Filed 4–27–22; 8:45 am]

**BILLING CODE 4000–01–P**

## ELECTION ASSISTANCE COMMISSION

### **Sunshine Act Meetings**

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Sunshine Act notice; notice of public meeting agenda.

**SUMMARY:** Public Meeting: U.S. Election Assistance Commission Board of Advisors Annual Meeting.

**DATES:** Monday, May 16, 2022, 1:00 p.m.–4:00 p.m. Eastern.

**ADDRESSES:** Virtual via Zoom.

The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: <https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw>.

**SUPPLEMENTARY INFORMATION:**

*Purpose:* In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual annual meeting of the Board of Advisors to discuss EAC updates and upcoming programs, and discuss the implementation of the Voluntary Voting System Guidelines (VMSG) 2.0 and electronic poll book pilot program next steps, as well as threats against election officials.

*Agenda:* The U.S. Election Assistance Commission (EAC) Board of Advisors will hold their 2022 Annual Meeting primarily to discuss next steps regarding the VMSG 2.0 and implementation, the status of the EAC's e-poll book pilot program, and threats against election officials. This meeting will include a question-and-answer discussion between board members and EAC staff.

Board members will also review FACA Board membership guidelines and policies with EAC Acting General Counsel and receive a general update about the EAC programming. The Board will also elect three members to the Executive Board Committee and consider proposed changes to the bylaws.

*Background:* On February 10, 2021 the U.S. Election Assistance Commission (EAC) announced the adoption of the Voluntary Voting System Guidelines (VMSG) 2.0; the VMSG 2.0 is the fifth iteration of national level voting system standards. On April 5, 2022, the EAC adopted the VMSG Lifecycle Policy as part of the implementation process.

The Federal Election Commission published the first two sets of federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VMSG on December 13, 2005. In an effort to update and improve version 1.0 of the VMSG, on March 31, 2015, the EAC commissioners unanimously approved VMSG 1.1.

The full agenda will be posted in advance on the EAC website: <https://www.eac.gov>.

**STATUS:** This meeting will be open to the public.

**FOR FURTHER INFORMATION CONTACT:**

Kristen Muthig, Telephone: (202) 897–9285, Email: [kmuthig@eac.gov](mailto:kmuthig@eac.gov).

**Camden Kelliher,**

*Associate Counsel, U.S. Election Assistance Commission.*

[FR Doc. 2022–09253 Filed 4–26–22; 4:15 pm]

**BILLING CODE P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 2740–053]

**Duke Energy Carolinas, LLC; Notice of Intent To File License Applications, Filing of Pre-Application Document (Pad), Commencement of Pre-Filing Process, Request for Comments on the Pad and Scoping Document, Identification of Issues and Associated Study Requests, and Virtual Public Scoping Meetings and Virtual Environmental Site Reviews**

a. *Type of Filing:* Notice of Intent to File License Application for New License and Commencing Pre-filing Process.

b. *Project No.:* 2740–053.

c. *Date Filed:* February 23, 2022.

d. *Submitted By:* Duke Energy Carolinas, LLC (Duke Energy).

e. *Name of Project:* Bad Creek Pumped Storage Project (Bad Creek Project).

f. *Location:* Oconee County, South Carolina.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *Licensee Contact:* Alan Stuart, Licensing Manager, Duke Energy, Mail Code EC–12Q 526 S. Church Street, Charlotte, NC 28202; (803) 640–8765; [alan.stuart@duke-energy.com](mailto:alan.stuart@duke-energy.com).

i. *FERC Contact:* Navreet Deo at (202) 502–6304, or email at [navreet.deo@ferc.gov](mailto:navreet.deo@ferc.gov).

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental

document cannot also intervene. See 94 FERC 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Duke Energy as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Duke Energy filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission's regulations.

n. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents via the internet through the Commission's Home Page (<http://www.ferc.gov>), using the "eLibrary" link. Enter the docket number(s), excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020, and continued on February 24, 2021. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff's Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of

the potential applications must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at: [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

All filings with the Commission must bear the appropriate heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by June 23, 2022.

#### p. Scoping Process.

The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an environmental assessment or Environmental Impact Statement. Due to recent concerns with large gatherings related to COVID-19, we do not intend to hold in-person public scoping meetings or an in-person environmental site review. Rather, we will hold virtual public scoping meetings and a virtual environmental site reviews.

#### Scoping Meetings

Commission staff will hold two virtual public scoping meetings. An evening meeting will focus on receiving input from the public and a daytime meeting will focus on concerns of resource agencies, Native American tribes, and NGOs. We invite all interested agencies, Native American tribes, NGOs, and individuals to attend one of these meetings to assist us in identifying the scope of environmental

issues that should be analyzed in the NEPA document. The scoping meetings will be recorded by a court reporter. All oral and written comments will become part of the Commission's public record. Oral comments will be limited to 5 minutes in duration.

#### Date and Time

##### *Meeting for the General Public*

Monday, May 16, 2022

7:00 p.m.–9:00 p.m. EDT

Call in number: 800–779–8625

Participant passcode: 3472916

##### *Meeting for Resource Agencies, Tribes, and NGOs*

Tuesday, May 17, 2022

10:00 a.m.–12:00 p.m. EDT

Call in number: 800–779–8625

Participant passcode: 3472916

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list and Duke Energy's mailing list. Copies of SD1 may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

#### Environmental Site Review

Duke Energy and Commission staff will hold two virtual Environmental Site Reviews of the Bad Creek Project on May 16, 2022, starting at 6:00 p.m., and May 17, 2022 at 9:00 a.m. Please contact Alan Stuart of Duke Energy at (803) 640–8765, or [alan.stuart@duke-energy.com](mailto:alan.stuart@duke-energy.com), by May 9, 2022 if you plan to attend the environmental site review. Meeting details will be provided by Duke Energy staff once attendance is confirmed.

#### Meeting Objectives

At the scoping meetings, staff will: (1) Briefly describe the relicensing process, as well as the projects and their operation; (2) initiate scoping of the issues; (3) review existing information and identify preliminary information and study needs; and (4) review the process plan and schedule for pre-filing activities. Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n of this notice.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09116 Filed 4–27–22; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 8936–000]

#### Far West Power Corporation; Notice of Authorization for Continued Project Operation

The Power Canal Hydroelectric Project is located on the tailrace canal of Pacific Gas and Electric Company's (PG&E) existing Potter Valley Project No. 77, on the East Fork Russian River, in Mendocino County, California. The license for Project No. 8936 was issued for a period ending April 14, 2022.

Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee(s) under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 8936 is issued to the Far West Power Corporation for a period effective April 15, 2022 through April 14, 2023 or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 14, 2023, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the

FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the Far West Power Corporation is authorized to continue operation of the Power Canal Hydroelectric Project, until such time as the Commission orders disposition of the project.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09125 Filed 4–27–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER22–735–002.

*Applicants:* Avista Corporation.

*Description:* Tariff Amendment: Avista OATT sections M, N and Q Amendment filing to be effective 3/31/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5198.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1445–001.

*Applicants:* Daylight I, LLC.

*Description:* Tariff Amendment: Group 2 FUA Amendment to be effective 5/25/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5229.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1566–001.

*Applicants:* Guernsey Power Station LLC.

*Description:* Tariff Amendment: Guernsey Baseline Supplement to be effective 5/16/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5200.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1669–000.

*Applicants:* California Independent System Operator Corporation.

*Description:* § 205(d) Rate Filing: 2022–04–21 Certificate of Concurrence—LGIA—APS, IID, SDG&E & White Wing to be effective 2/1/2022.

*Filed Date:* 4/21/22.

*Accession Number:* 20220421–5270.

*Comment Date:* 5 p.m. ET 5/12/22.

*Docket Numbers:* ER22–1670–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA

No. 6105; Queue No. AG1–336 re: withdrawal to be effective 5/22/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5055.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1671–000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2022–04–22\_SA 3502 Termination of METC-Orion Renewable Resources GIA (J832) to be effective 8/31/2021.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5062.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1672–000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2022–04–22\_SA 3388 ATXI-Knox County Wind Farm 1st Rev GIA (J844) to be effective 4/12/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5069.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1673–000.

*Applicants:* Alabama Power

Company, Georgia Power Company, Mississippi Power Company.

*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Deatsville Solar LGIA Filing to be effective 4/13/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5149.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1674–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: ISA, SA No. 5631; Queue No. AC1–098/AC1–099/AC2–084 to be effective 3/25/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5178.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1675–000.

*Applicants:* NSTAR Electric Company.

*Description:* § 205(d) Rate Filing: Ocean State Power, LLC—Related Facilities Agreement to be effective 4/23/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5186.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1676–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Notice of Cancellation of WMPA, SA No. 6033; Queue No. AG1–337 re: withdrawal to be effective 6/22/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5220.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1677–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Notice of Cancellation of WMPA, Service Agreement No. 6118; Queue No. AG1–330 to be effective 6/22/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5222.

*Comment Date:* 5 p.m. ET 5/13/22.

*Docket Numbers:* ER22–1678–000.

*Applicants:* Virginia Electric and Power Company, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Virginia Electric and Power Company submits tariff filing per 35.13(a)(2)(iii): Service Agreement No. 6425—NITSA between PJM and VEPCO dba Dominion Energy to be effective 4/12/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5247.

*Comment Date:* 5 p.m. ET 5/13/22.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09121 Filed 4–27–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2800–052]

#### Essex Company, LLC; Notice of Application for Amendment of License, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- Type of Proceeding:* Application non-capacity amendment of license.
- Project No.:* 2800–052.

c. *Date Filed*: August 31, 2020 and supplemented March 22, 2022.

d. *Licensee*: Essex Company, LLC.

e. *Name of Project*: Lawrence Hydroelectric Project.

f. *Location*: The project is located on the Merrimack River in the City of Lawrence in Essex County, Massachusetts.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a–825r.

h. *Licensee Contact*: Kevin M. Webb, Essex Company, LLC, 670 N Commercial Street, Suite 204, Manchester, NH, 03101, (405) 297–2822, [Kwebb@centralriverspower.com](mailto:Kwebb@centralriverspower.com).

i. *FERC Contact*: Rebecca Martin, (202) 502–6012, [Rebecca.martin@ferc.gov](mailto:Rebecca.martin@ferc.gov).

j. *Deadline for filing comments, interventions, and protests*: Deadline for filing comments, motions to intervene, and protests: May 23, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–2800–052. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request*: The Licensee proposes to remove the historic North and South Canals from the project because they are not needed for project purposes.

l. *Locations of the Application*: This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. *Individuals desiring to be included on the Commission's mailing list* should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

[FR Doc. 2022–09126 Filed 4–27–22; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP21–470–000]

#### Freeport LNG Development, L.P., FLNG Liquefaction, LLC, FLNG Liquefaction 2, LLC, FLNG Liquefaction 3, LLC; Notice of Revised Schedule for Environmental Review of the Freeport LNG Capacity Amendment Project

This notice identifies the Federal Energy Regulatory Commission staff's revised schedule for the completion of the environmental assessment (EA) for the Freeport LNG Capacity Amendment Project. The first notice of schedule, issued on December 14, 2021, identified April 22, 2022 as the EA issuance date. However, environmental staff is in the process of assessing Freeport LNG Development, L.P.'s recent supplemental filings regarding air quality emissions due to the capacity modifications. As a result, staff has revised the schedule for issuance of the EA.

#### Schedule for Environmental Review

Issuance of the Notice of Availability of the EA—May 12, 2022  
90-day Federal Authorization Decision  
Deadline—August 10, 2022

If another schedule change becomes necessary, an additional notice will be provided so that the relevant agencies are kept informed of the project's progress.

#### Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC website ([www.ferc.gov](http://www.ferc.gov)). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the

selected date range and “Docket Number” (*i.e.*, CP21–470), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09119 Filed 4–27–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP22–725–000]

#### Guardian Pipeline, L.L.C.; Notice of Initiation of Section 5 Proceeding

On April 21, 2022, the Commission issued an order in Docket No. RP22–725–000, pursuant to section 5 of the Natural Gas Act, 15 U.S.C. 717d, instituting an investigation into whether the rates currently charged by Guardian Pipeline, L.L.C. are just and reasonable and setting the matter for hearing. *Guardian Pipeline, L.L.C.*, 179 FERC ¶ 61,050 (2022).

Any interested person desiring to be heard in Docket No. RP22–725–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission’s Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 30 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission’s Home Page (<http://www.ferc.gov>) using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission’s Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call

toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the “eFile” link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09123 Filed 4–27–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. PL20–3–000]

#### Actions Regarding the Commission’s Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of policy statement.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is revising its price index policy set forth in its *Policy Statement on Natural Gas and Electric Price Indices (Initial Policy Statement)* to encourage more market participants to report their transactions to price index developers, to provide greater transparency into the natural gas price formation process, and to increase confidence in the accuracy and reliability of wholesale natural gas prices. First, the Commission is revising the price index policy to allow market participants that report transaction data to price index developers (data providers) to report either their non-index based next-day transactions, their non-index based next-month transactions, or both, to price index developers. In addition, the Commission is revising the price index policy to encourage data providers to report transactions to as many Commission-approved price index developers as possible, and to allow data providers to self-audit on a biennial basis. The Commission is also modifying its

standards to state that price index developers should indicate whether a published index price is calculated using market information other than the trades at the index’s specified location, or a market assessment, in their published price indices and data distributions. Moreover, the Commission is modifying its standards so that each approved price index developer should seek re-approval from the Commission every seven years to demonstrate that it fully or substantially meets the standards set forth in the *Initial Policy Statement*. Beginning six months after the effective date of this Revised Policy Statement, interstate natural gas pipelines and public utilities proposing to use price indices in jurisdictional tariffs will no longer be entitled to the rebuttable presumption that a price index developer’s price indices produce just and reasonable rates unless the price index developer has obtained approval or re-approval from the Commission within the last seven years. Finally, the Commission is modifying the review period for assessing the liquidity of natural gas price indices submitted for reference in Commission-jurisdictional tariffs to 180 continuous days out of the most recent 365 days. This will help to ensure that price indices referenced in Commission-jurisdictional tariffs are sufficiently liquid.

**DATES:** This Policy Statement becomes applicable on December 31, 2022.

#### FOR FURTHER INFORMATION CONTACT:

Evan Oxhorn (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8183, [Evan.Oxhorn@ferc.gov](mailto:Evan.Oxhorn@ferc.gov).

Eric Primosch (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6483, [Eric.Primosch@ferc.gov](mailto:Eric.Primosch@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

1. On December 17, 2020, the Commission issued a proposed revised policy statement on natural gas and electric indices,<sup>1</sup> proposing revisions to the price index policy set forth in the *Policy Statement on Natural Gas and Electric Price Indices*<sup>2</sup> to encourage

<sup>1</sup> *Actions Regarding the Comm’n’s Pol’y on Price Index Formation & Transparency, & Indices Referenced in Nat. Gas & Elec. Tariffs*, 85 FR 83940 (Dec. 23, 2020) 173 FERC ¶ 61,237 (2020) (Proposed Revised Policy Statement).

<sup>2</sup> 104 FERC ¶ 61,121 (Initial Policy Statement), *clarified*, *Order on Clarification of Pol’y Statement on Nat. Gas and Elec. Price Indices*, 105 FERC ¶ 61,282 (2003) (2003 Clarification Order), *clarified*, *Order Further Clarifying Pol’y Statement on Nat.*

more market participants to report their transactions to price index developers<sup>3</sup> and to provide greater transparency into the natural gas price formation process. The Commission indicated that the changes would increase confidence in the accuracy and reliability of wholesale natural gas prices. In this Revised Policy Statement, we adopt the proposals in the Proposed Revised Policy Statement.

2. First, we revise the price index policy standards for market participants that report data to price index developers (data providers) to allow them to report either their non-index based next-day transactions, their non-index based next-month transactions, or both, to price index developers. In addition, we encourage data providers to report to as many Commission-approved price index developers as possible. Further, we allow data providers to self-audit on a biennial basis.

3. We also modify the price index policy standards for price index developers to provide that they should indicate when they use a market assessment<sup>4</sup> to calculate an index price. We also modify the standards so that each price index developer should seek approval or re-approval from the Commission every seven years that it meets or continues to meet the standards set forth in the Initial Policy Statement. Beginning six months after the effective date of this Revised Policy Statement, interstate natural gas pipelines and public utilities proposing to use price indices in jurisdictional tariffs will no longer be entitled to the rebuttable presumption that a price index developer's price indices produce just and reasonable rates unless the price index developer has obtained approval or re-approval from the Commission within the last seven years. Finally, we clarify the review period for assessing the liquidity of natural gas price indices submitted for reference in Commission-jurisdictional tariffs.

4. As noted in the Proposed Revised Policy Statement, natural gas price indices play a vital role in the energy industry, as they are used to price billions of dollars of natural gas and electricity transactions annually in both the physical and financial markets. A

natural gas price index is a weighted average price derived from a set of fixed-price natural gas transactions<sup>5</sup> within distinct geographical boundaries that market participants voluntarily report to a price index developer.

5. Natural gas price indices serve as a proxy for the locational cost of natural gas in the daily and monthly markets and many market participants reference natural gas index prices in their physical and financial transactions. Interstate natural gas pipelines, public utilities, Regional Transmission Organizations (RTO), and Independent System Operators (ISO) reference natural gas price indices in their Commission-jurisdictional tariffs for various terms and conditions of service. State commissions also use natural gas price indices as benchmarks when reviewing the prudence of natural gas or electricity purchases. Finally, many natural gas financial derivative contracts that are used in hedging and speculation settle against natural gas price indices.

6. We find it is important to encourage robust transaction reporting to price index developers for transparent and reliable price index development. We find the revisions to the price index policy that we adopt here will help to encourage more market participants to report natural gas transactions to price index developers and increase the transparency of the natural gas price formation process.

7. The Commission's price index policy applies to both natural gas and electric price index developers and data providers. The Commission's price index policy will continue to apply to natural gas data providers and natural gas price index developers, except to the extent that this Revised Policy Statement revises the provisions in the Commission's price index policy as discussed below. The Commission's price index policy will continue to apply to electric data providers and electric price index developers as it always has.

8. We revise the Commission's price index policy and issue this Revised

Policy Statement, with an effective date of December 31, 2022.

## I. Background

### A. Initial Policy Statement and Clarification Orders

9. On July 24, 2003, the Commission issued the Initial Policy Statement, in which it set forth the price index policy. Through that policy, the Commission "sought to strengthen confidence" in the natural gas and electricity markets "by encouraging comprehensive reporting of energy transactions to price index developers and by encouraging price index developers to provide useful information to the industry on the volumes of transactions and number of participants trading at various trading hubs."<sup>6</sup>

10. Under the Initial Policy Statement, market participants can voluntarily report transactions to price index developers. For those market participants that choose to report to price index developers, *i.e.*, data providers, the Initial Policy Statement set forth the following minimum standards for reporting transactions to price index developers:

(1) Code of conduct—adopting and making public a code of conduct that employees will follow when buying and selling natural gas or reporting data to price index developers;

(2) source of data—having trade data reported by a department of the company that is independent from and not responsible for natural gas trading;

(3) data reported—reporting each bilateral transaction between non-affiliated companies which details the price, volume, whether it was a purchase or a sale, the delivery/receipt location, and whether it was a next-day or next-month transaction; (4) error resolution process—cooperating with the error resolution process adopted by the price index developer in a timely manner; and (5) data retention and review—establishing minimum time periods for retaining all relevant data related to reported trades.<sup>7</sup> The Commission designed these standards to create a uniform process of transaction reporting that provides price index developers assurance that the data they receive from data providers is accurate and truthful. If the data provider can demonstrate that it has adopted and followed the standards for reporting set forth in the Commission's Initial Policy Statement, it will benefit from a rebuttable presumption that it has submitted its transactions accurately,

the Commission designed these standards to create a uniform process of transaction reporting that provides price index developers assurance that the data they receive from data providers is accurate and truthful. If the data provider can demonstrate that it has adopted and followed the standards for reporting set forth in the Commission's Initial Policy Statement, it will benefit from a rebuttable presumption that it has submitted its transactions accurately,

*Gas & Elec. Price Indices*, 70 FR 41002 (July 15, 2005) 112 FERC ¶ 61,040 (2005) (2005 Clarification Order) (collectively, price index policy).

<sup>3</sup> Price index developers include Argus Media (Argus), Natural Gas Intelligence (NGI), Natural Gas Week, and S&P Global Platts (Platts).

<sup>4</sup> See Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 28. A price index developer is considered to use a "market assessment" when it uses "market information, other than the trades at the index's specified location, to determine the value of the index price."

<sup>5</sup> The term "fixed-price natural gas transactions" refers to fixed-price next-day delivery, fixed-price next-month delivery, and physical basis transactions (for next-month delivery). These transaction types are defined in the FERC Form No. 552: Annual Report of Natural Gas Transactions (Form No. 552) instructions. The Form No. 552 requires market participants that annually buy or sell more than 2.2 trillion British Thermal Units (Btu) of physical natural gas to provide aggregated data related to their fixed-price, physical basis, New York Mercantile Exchange (NYMEX) Trigger agreements, NYMEX Plus transactions made in the next-day and next-month markets, and index-based transactions referencing the next-day and next-month markets.

<sup>6</sup> Initial Policy Statement, 104 FERC ¶ 61,121 at P 11.

<sup>7</sup> *Id.* P 34.

timely, and in good faith (Safe Harbor Policy).<sup>8</sup>

11. Under the Initial Policy Statement, becoming a Commission-approved price index developer is also voluntary. In the Initial Policy Statement, the Commission set forth minimum standards for publishing price indices that, if met, establish a presumption that a price index developer's index at a defined location will result in just and reasonable charges. These standards for price index developers include: (1) A code of conduct and confidentiality—publicly disclosing how it will obtain, treat, and maintain price data, including how it calculates its indices while also entering into confidentiality agreements with its data providers; (2) completeness—publishing all available trade information for each hub including: Total volume, the number of transactions, the high/low range of prices, and the weighted average price; (3) data verification, error correction, and monitoring—verifying its data by matching purchases with sales and contacting data providers over any discrepancies as well as publishing a notice of the corrected price if a reported price is significantly erroneous; (4) verifiability—participating in an independent audit or verification of its processes annually and making the results of that audit public; and (5) accessibility—providing all interested customers reasonable access to the data in a timely fashion and providing the Commission access to the data to conduct an investigation.<sup>9</sup> The Commission intended for these standards to ensure that market participants and regulators have confidence that natural gas and electric price indices published by price index developers that are referenced in Commission-jurisdictional tariffs are based on consistent, transparent, and verifiable processes and methodologies that help to ensure reliable prices.<sup>10</sup>

12. On December 12, 2003, the Commission issued its *2003 Clarification Order*.<sup>11</sup> The *2003 Clarification Order* provided clarifications to the Commission's price

index policy related to the standards for data providers in the Initial Policy Statement.

13. On July 5, 2005, the Commission issued its *2005 Clarification Order*.<sup>12</sup> The *2005 Clarification Order* provided clarifications to emphasize the broad nature of the Commission's Safe Harbor Policy to encourage companies both to adopt the appropriate procedures to take advantage of the Safe Harbor Policy and to contribute their transaction information to the price formation process. The *2005 Clarification Order* also reminded companies of their obligation to notify the Commission when there is a change in their reporting practices.<sup>13</sup>

#### B. Price Index Order

14. On November 19, 2004, the Commission issued its *Price Discovery in Natural Gas and Electric Markets*<sup>14</sup> to address issues concerning price indices in natural gas and electricity markets. The Commission directed Commission staff to continue to monitor price formation in wholesale markets, including price index developer and market participant adherence to the previously enumerated standards from the Initial Policy Statement.<sup>15</sup> The Commission reviewed the submissions from price index developers and granted approval for their price indices to be referenced in Commission-jurisdictional tariffs.<sup>16</sup> The Commission also adopted the criteria for price indices to be referenced in Commission-jurisdictional tariffs.<sup>17</sup>

#### C. The Use of Natural Gas Price Indices in Commission Jurisdictional Activities

15. Given that natural gas price index developers use physical fixed-price natural gas transactions to calculate the price of published natural gas indices, it is important that transaction reporting is robust and that price index development is transparent. The significant role played by natural gas price indices became apparent during the 2000–2001 Western Energy Crisis, when companies intentionally

misreported transactions to price index developers to manipulate natural gas index prices in the Western United States.<sup>18</sup> In the *Price Index Order*, the Commission established guidelines to ensure that natural gas price indices that are used in Commission-jurisdictional tariffs are robust, free from manipulation, and reflect market fundamentals.<sup>19</sup> Subsequently, in the *Energy Policy Act of 2005 (EPAct 2005)*, Congress amended the *Natural Gas Act* to give the Commission additional authority with respect to natural gas price indices.<sup>20</sup>

16. After the issuance of the *Policy Statement* and the *Price Index Order*, market participants increased the reporting of their fixed-priced natural gas transactions to price index developers, which resulted in greater confidence in those price indices. However, after 2010, the estimated traded volume of fixed-price natural gas transactions reported to price index developers began to decline significantly.<sup>21</sup> Form No. 552 data show that the estimated volume of fixed-price transactions voluntarily reported to price index developers declined by approximately 58% from 2010 until 2020.<sup>22</sup> Figure 1 shows estimated physical natural gas volumes reported to price index developers based on Form No. 552 data.

<sup>18</sup> Initial Policy Statement, 104 FERC ¶ 61,121 at P 8 & n.1.

<sup>19</sup> Price Index Order, 109 FERC ¶ 61,184.

<sup>20</sup> Energy Policy Act of 2005, Public Law 109–58, 119 Stat. 691–692 (2005) (codified in relevant part at Natural Gas Act of 1938, 15 U.S.C. 717c–1, 717t–1, 717t–2).

<sup>21</sup> Two price index developers now include fixed-price transactions from the InterContinental Exchange (ICE) to increase the liquidity of their price indices. Commission staff analysis of the estimated volumes reported to price index developers via the Form No. 552 does not include supplemental information from ICE.

<sup>22</sup> The Commission must estimate the volume of transactions reported to price index developers using Form No. 552 submissions because Form No. 552 filers can provide aggregated data for themselves and their affiliates, some of whom may or may not report to price index developers. Commission staff estimates this volume by calculating the average of the minimum possible volume reported (based on the subset of filers with affiliates that all indicate that they report to price index developers) and the maximum possible volume reported (based on the larger set of filers with at least one affiliate that indicates that it reports to price index developers).

<sup>8</sup> *Id.* P 37.

<sup>9</sup> *Id.* P 33.

<sup>10</sup> See Initial Policy Statement, 104 FERC ¶ 61,121.

<sup>11</sup> 2003 Clarification Order, 105 FERC ¶ 61,282.

<sup>12</sup> 2005 Clarification Order, 112 FERC ¶ 61,040.

<sup>13</sup> *Id.* P 21.

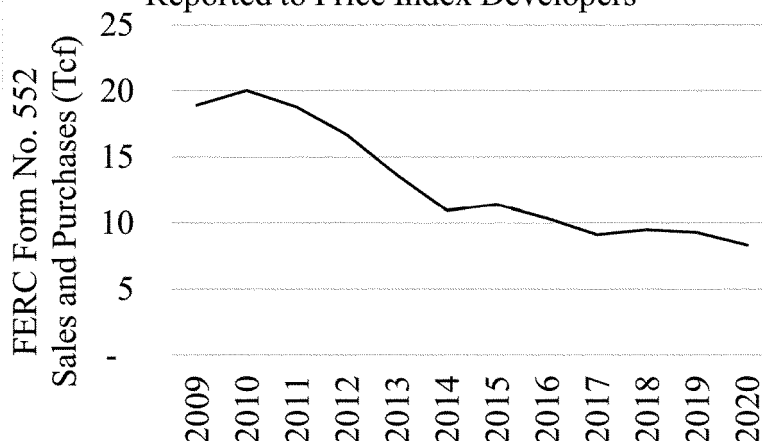
<sup>14</sup> 109 FERC ¶ 61,184 (2004) (Price Index Order).

<sup>15</sup> *Id.* P 22.

<sup>16</sup> *Id.* at ordering para. (B).

<sup>17</sup> *Id.* at ordering para. (D).

Figure 1: Historical Estimated Volumes Reported to Price Index Developers



Source: Form No. 552

17. At the same time that fixed-price reporting to price index developers decreased, the traded volume of natural gas transactions that referenced natural gas price indices, also known as index gas, increased. For example, Form No. 552 data showed that index gas increased from 68% of the traded volumes in the U.S. physical natural gas market in 2010 to 82% in 2020.

#### *D. Standards for Price Indices Used in Jurisdictional Tariffs*

18. The Commission has a statutory obligation to ensure that jurisdictional rates are just and reasonable. Under the Natural Gas Act and Federal Power Act, the Commission's jurisdiction extends to sales of natural gas and electricity for resale in interstate commerce, interstate transmission of natural gas and electricity, and the related pricing mechanisms within jurisdictional tariffs.<sup>23</sup> One way the Commission helps to ensure just and reasonable jurisdictional rates is through the review and approval of natural gas price indices referenced in Commission-approved natural gas pipeline and public utility tariffs.

19. An interstate natural gas pipeline or public utility proposing to include a price index in its Commission-jurisdictional tariff bears the burden of supporting its proposed price index. In the Price Index Order, the Commission stated that, when a natural gas pipeline or utility proposes to use a new natural gas or electric price index reference in a jurisdictional tariff or to change an existing price index reference, the Commission would apply a

presumption that the proposed price index at a defined location will result in just and reasonable rates if the natural gas pipeline or public utility: (1) Proposes to use a price index at a defined location published by one of the price index developers that the Commission has previously found to meet the developer criteria established in the *Policy Statement*, and (2) demonstrates that the price index at a defined location meets one or more of the applicable liquidity criteria for the appropriate review period.<sup>24</sup> If parties to the proceeding protest the use of the proposed price index at a defined location, they are required to support the protest with evidence that the selected location does not meet the liquidity criteria or show good reason why the location will not result in just and reasonable rates and should not be used. An interstate natural gas pipeline or public utility may also file to reference a price index at a defined location that does not satisfy these two conditions. In such a case, the natural gas pipeline or public utility bears the burden of showing that the price index at a defined location will result in just and reasonable rates and must support its filing accordingly.<sup>25</sup>

20. Under the Commission's market behavior rules,<sup>26</sup> marketers and

interstate natural gas pipelines making jurisdictional sales of natural gas and jurisdictional sellers of electric energy that have or are seeking market-based rate authority that elect to report to price index developers must submit accurate and factual information and report in a manner consistent with the procedures set forth in the Commission's price index policy.<sup>27</sup>

#### *E. Proposed Revised Policy Statement*

21. Noting the significant downward trend in data providers reporting transactions to price index developers and the concurrent rise in traded volumes of natural gas transactions that referenced natural gas price indices, discussed above, Commission staff held the Developments in Natural Gas Index Liquidity and Transparency technical conference (2017 technical conference) on June 29, 2017, to address natural gas index liquidity and transparency issues, and potential actions the Commission could consider taking to increase both the volume of transactions reported to natural gas price index developers and the transparency of the natural gas price formation process.<sup>28</sup> The 2017 technical conference discussion and the post-technical conference comments demonstrated a need to revise the Commission's price index policy and

<sup>24</sup> Price Index Order, 109 FERC ¶ 61,184 at P 68 (citing *N. Nat. Gas Co.*, 104 FERC ¶ 61,182, at P 10 (2003)).

<sup>25</sup> *Id.* P 69.

<sup>26</sup> The Commission established the natural gas market behavior rules in 2003 in Order No. 644. *Amendment to Blanket Sales Certificates*, Order No. 644, 68 FR 66323 (Nov. 26, 2003), 105 FERC ¶ 61,217 (2003), *reh'g denied*, 107 FERC ¶ 61,174 (2004) (codified at 18 CFR 284.288, 18 CFR 284.403); *Investigation of Terms & Conditions of Public Utility Mkt.-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), *order on reh'g and*

*clarification*, 107 FERC ¶ 61,175 (2004). The electric market behavior rules were codified later in 2006. *Conditions for Pub. Util. Mkt.-Based Rate Authorization Holders*, Order No. 674, 71 FR 9695 (Mar. 29, 2006), 114 FERC ¶ 61,163 (2006) (codified at 18 CFR 35.41(c)).

<sup>27</sup> 18 CFR 35.41; 18 CFR 284.288(a); 18 CFR 284.403(a); Initial Policy Statement, 104 FERC ¶ 61,121 at P 37.

<sup>28</sup> See Docket No. AD17-12-000. A Commission staff-led technical conference addressing similar issues was held in 2003 in Docket No. AD03-7-000.

<sup>23</sup> See, e.g., 15 U.S.C. 717(b)–717(d); Natural Gas Policy Act of 1978, 15 U.S.C. 3431(a)(1)(A)–3431(a)(1)(D); 16 U.S.C. 824(b)–824(f).

provided the Commission a better understanding of potential reforms to address declining data provider transaction reporting to price index developers and the robustness and reliability of price index formation.

22. On December 17, 2020, the Commission issued the Proposed Revised Policy Statement,<sup>29</sup> which proposed several revisions to the Commission's price index policy to encourage more market participants to report their transactions to price index developers and to provide greater transparency into the natural gas price formation process to increase confidence in the accuracy and reliability of wholesale natural gas prices.

## II. Discussion

23. As part of its mandate to ensure just and reasonable rates in the wholesale natural gas and electric markets, the Commission reviews its existing policies and regulations from time to time. The Commission's policies and regulations related to natural gas and electric price indices date to the early 2000s and were adopted in response to a lack of confidence in price indices.<sup>30</sup> Since then, the physical trading of natural gas, the reporting of those transactions, and the development of price indices by price index developers has changed.

24. In order to address the decline in reporting to price index developers, the Commission proposed several revisions to the Commission's price index policy in its Proposed Revised Policy Statement to decrease the reporting burden on data providers and potentially increase the number of market participants reporting transactions to Commission-approved price index developers. The Commission stated that increased price reporting would contribute to the robustness of Commission-approved price indices and could lead to more accurate and reliable price indices referenced in Commission-jurisdictional tariffs.<sup>31</sup>

25. In the Proposed Revised Policy Statement, the Commission also proposed several revisions to the Commission's price index policy applicable to Commission-approved price index developers. Specifically, the Commission proposed to modify how Commission-approved price index developers form natural gas price

indices and to ensure that these natural gas price index developers continue to adhere to the Commission's policies. The Commission stated that these proposed revisions would increase the transparency of the natural gas price formation process and maintain industry confidence in the price indices.<sup>32</sup>

26. Finally, the Commission proposed to clarify the timeframe over which to assess the liquidity for natural gas price indices referenced in natural gas and electric tariffs. This revision would ensure that natural gas price indices referenced in Commission-jurisdictional tariffs are liquid at the time of attestation.<sup>33</sup>

27. The Commission received 14 comments, including reply comments, in response to the Proposed Revised Policy Statement. The attached Appendix A lists those that submitted comments.<sup>34</sup>

### A. Reporting Transactions to Price Index Developers

#### 1. Commission Proposal

28. In the *Initial Policy Statement*, the Commission set forth standards for data providers reporting transactions to price index developers. For the "Data Reported" standard, the Commission stated that natural gas or electric data providers should report "each bilateral, arm's length transaction between non-affiliated companies in the physical (cash) markets."<sup>35</sup> The Commission also defined the term for transactions reported to price index developers as "next day or next month."<sup>36</sup> The Commission later clarified that transactions reported to price index developers should be "non-index" based transactions for the next-day and next-month markets.<sup>37</sup> Regarding natural gas price indices, the Commission later acknowledged that physical basis transactions occurring during bidweek "are a significant aspect of wholesale natural gas markets and utilize or could contribute to the

formation of price indices."<sup>38</sup> Thus, the Commission requires natural gas data providers who elect to report their transactions to price index developers to report both their next-day fixed-price natural gas transactions and next-month fixed-price and physical basis natural gas transactions to price index developers.<sup>39</sup>

29. In the Proposed Revised Policy Statement, the Commission proposed to allow data providers to report either all non-index based next-day transactions, all non-index based next-month transactions, or both non-index based next-day and non-index based next-month transactions. Under this revision, whichever set of transactions a data provider chooses to report (next-day, next-month, or both), it should submit data on each bilateral, arm's length transaction within that set.<sup>40</sup> The Commission explained that these revisions would reduce the reporting burden for data providers who primarily transact in the next-month market because those data providers can now report their next-month transactions without being required to take on the daily burden of reporting their next-day transactions.

#### 2. Comments

30. The majority of commenters express support for the proposed revision, with several commenters suggesting that the proposed revision will enhance price indices by reducing the burden of reporting and encouraging more robust participation.<sup>41</sup>

31. NGSa states that the proposed revision will foster more robust levels of participation in reporting to price index developers, particularly for bidweek<sup>42</sup> transactions.<sup>43</sup>

32. EEI states the proposed revision would significantly reduce the daily

<sup>38</sup> *Transparency Provisions of Section 23 of the Nat. Gas Act*, Order No. 704, 73 FR 1014 (Jan. 4, 2008), 121 FERC ¶ 61,295 (2007), *order on reh'g and clarification*, Order No. 704-A, 73 FR 55726 (Sept. 26, 2008), 124 FERC ¶ 61,269, at P 89, *reh'g denied*, Order No. 704-B, 125 FERC ¶ 61,302 (2008).

<sup>39</sup> The Form No. 552 collects information on these types of transactions acknowledging their role in next-day and next-month price index formation.

<sup>40</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 21.

<sup>41</sup> American Public Gas Association (APGA) Comments at 12; Argus Comments at 3; Edison Electric Institute (EEI) Comments at 4; Energy Intelligence Comments at 1; EQT Comments at 5; Electric Power Supply Association (EPSA) Comments at 2-3; Interstate Municipal Gas Agency (IMGA) Comments at 4; NGI Comments at 3-4; Natural Gas Supply Association (NGSA) Comments at 4-5; Platts Comments at 4.

<sup>42</sup> Bidweek is a time frame occurring during the last five business days of every month at which most next-month contracts are traded. Delivery of these contracts takes place the following month.

<sup>43</sup> NGSa Comments at 4.

<sup>32</sup> *Id.* P 17.

<sup>33</sup> *Id.*

<sup>34</sup> Appendix A will not be published in the *Federal Register*.

<sup>35</sup> *Initial Policy Statement*, 104 FERC ¶ 61,121 at P 34.

<sup>36</sup> *Id.*

<sup>37</sup> See 2003 Clarification Order, 105 FERC ¶ 61,282 at P 12 & n.4 ("As noted in Policy Statement ¶ 34.3, reportable transactions are non-index based 'bilateral, arm's-length transaction between non-affiliated companies in the physical (cash) markets at all trading locations.' Note, however, that if a participant reports trades to an index developer that publishes only a limited or regional index, the market participant must report trades in other areas not covered by the limited or regional index to another index developer.").

<sup>29</sup> 173 FERC ¶ 61,237.

<sup>30</sup> *Initial Policy Statement*, 104 FERC ¶ 61,121 at P 1.

<sup>31</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 16.

price reporting requirement burden on data providers, which may lead to increased reporting by “smaller and mid-sized companies.”<sup>44</sup> Similarly, EQT supports the proposed revision because market participants who primarily conduct monthly transactions would not have to bear the cost and time burden of reporting occasional daily trades, and EQT suggests the proposal will increase the number of data providers and thereby the accuracy of published price indices.<sup>45</sup>

33. APGA and Platts state that allowing data providers to report next-day and/or next-month transactions would make market participants more willing to report transactions in markets where they most actively trade, potentially benefitting monthly price indices.<sup>46</sup> NGI states that the proposed revision will help market participants, mainly smaller local distribution companies, utilities, and end-users, that transact most of their volumes in the next-month (*i.e.*, bidweek) market versus the next-day market.<sup>47</sup> NGI further states that such data providers could contribute bidweek volumes to a price index developer without the “onerous and resource-consuming price reporting function” in the next-day market for their infrequent daily deals.<sup>48</sup>

34. Similarly, Argus states that it has been informed by market participants that they often do not transact in both next-day and next-month markets, or that market participants do minimal trading in one market while consistently transacting in the other market. Argus explains that these market participants “lack the willingness to add manpower and systems” to report to price index developers when they transact so few transactions.<sup>49</sup>

35. American Forest & Paper Association and Process Gas Consumers Group (AFPA/PGC) believe the proposed revision will only result in a modest increase to the total amount of reported trades and finds that the proposed revision “does nothing to specifically encourage voluntary reporting by marketers.” AFPA/PGC further state that the Commission should “strongly encourage” reporting by all natural gas marketers to increase the volume of transactions reported to price index developers.<sup>50</sup>

### 3. Commission Determination

36. We adopt the proposal in the Proposed Revised Policy Statement to allow data providers to elect to report either all non-index based next-day transactions, all non-index based next-month transactions, or both non-index based next-day and non-index based next-month transactions to price index developers. Under this modification to the price index policy, we require that for whichever set of transactions a data provider chooses to report (next-day, next-month, or both), that data provider must submit data on *each* bilateral, arm’s length transaction within that set. We think that this revision will reduce the reporting burden for data providers because it will give them the ability to report data for the market (either next-day or next-month) that they primarily transact in. We expect that this revision may lead to additional reporting of next-month transactions as data providers who predominantly transact in the next-month market may choose to begin reporting their next-month transactions to price index developers now that they no longer have to take on the daily burden of reporting their next-day transactions as well.

37. The majority of commenters express support for the proposal to allow data providers to elect to report either all non-index based next-day transactions, all non-index based next-month transactions, or both non-index based next-day and non-index based next-month transactions to price index developers.<sup>51</sup> We agree with these commenters that adopting the proposal in the Proposed Revised Policy Statement would lower the reporting burden for data providers. As a result, it may also foster more robust participation in reporting to price index developers, increasing the accuracy of natural gas indices.<sup>52</sup> As noted by AFPA/PGC,<sup>53</sup> any increase in reporting to price index developers may be modest; nonetheless, we expect that any such increase will enhance the overall accuracy and robustness of the price indices they develop. Furthermore, we continue to think that, as stated in the Proposed Revised Policy Statement, adopting the proposal will increase reporting in the next-month market, where reporting to price index developers is most needed.<sup>54</sup> Further, to

that end and as suggested by AFPA/PGC,<sup>55</sup> we strongly encourage all market participants (including marketers) to report their transactions to price index developers as additional data providers will lead to more robust price indices.

38. We note that the adoption of the proposal in the Proposed Revised Policy Statement to allow data providers to elect to report either all non-index based next-day transactions, all non-index based next-month transactions, or both non-index based next-day and non-index based next-month transactions to price index developers, necessitates a minor adjustment to the Form No. 552 to reflect a reporting company’s<sup>56</sup> ability to identify the reporting of non-index based next-day transactions, non-index based next-month transactions, or both types of transactions in its Form No. 552. We revise the Form No. 552 to allow filers to identify if they report their next-day and/or their next-month fixed-price and physical basis transactions to price index developers. Appendix B explains this revision to the Form No. 552.<sup>57</sup>

39. Finally, we note that as of Fall 2021, several price index developers changed their bidweek price index determination period from the last five business days of every month to a three-business day period, generally concluding on the expiration date of the prompt-month NYMEX natural gas futures contract. Thus, physical natural gas transactions generally occurring during the last two business days of the month, which generally have less liquidity than the prior three business days and are subject to post-expiration price volatility, no longer contribute to the formation of several monthly price indices. Several price index developers made this change to align the price determination period during bidweek with higher volume trading days and to avoid price volatility from additional trading days. We find that this new timeframe for bidweek transactions still complies with the Commission’s price index policy.<sup>58</sup>

<sup>55</sup> AFPA/PGC Comments at 4–5.

<sup>56</sup> A reporting company is the legal entity whose information is being submitted to the Commission via a Form No. 552 filing. Reporting companies may or may not be data providers reporting transactional data to price index developers.

<sup>57</sup> Appendix B will not be published in the **Federal Register**.

<sup>58</sup> See Order No. 704, 121 FERC ¶ 61,295 at P 41. The Commission defined a next-month natural gas contract reported on its Form No. 552 as a transaction executed during the last five business days of one month for uniform delivery over the next month. This timeframe was commonly known as bidweek.

<sup>44</sup> EEI Comments at 4–5.

<sup>45</sup> EQT Energy LLC (EQT) Comments at 5.

<sup>46</sup> APGA Comments at 12; Platts Comments at 4.

<sup>47</sup> NGI Comments at 3–4.

<sup>48</sup> *Id.* at 4.

<sup>49</sup> Argus Comments at 4.

<sup>50</sup> AFPA/PGC Comments at 4–5.

<sup>51</sup> APGA Comments at 12; Argus Comments at 4; EEI Comments at 4; Energy Intelligence Comments at 1; EPSA Comments at 2–3; EQT Comments at 5; IMGA Comment at 4; NGI Comments at 3–4; NGSA Comments at 4–5; Platts Comments at 4.

<sup>52</sup> EQT Comments at 5; NGSA Comments at 4.

<sup>53</sup> AFPA/PGC Comments at 4–5.

<sup>54</sup> See Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 20.

## B. Encouraging Comprehensive Reporting

### 1. Commission Proposal

40. In the Proposed Revised Policy Statement, the Commission proposed to encourage all data providers to report their transaction data to as many Commission-approved price index developers as possible.<sup>59</sup> The Commission's proposal sought to address the incorrect view that the Commission's price index policy had limited data providers to reporting to only one price index developer.

### 2. Comments

41. Several commenters agree that reporting to multiple price index developers could lead to more robust price indices.<sup>60</sup> More specifically, APGA agrees with the Commission and finds that it would be helpful if all data providers reported to as many Commission-approved price index developers as possible.<sup>61</sup> Argus notes that if more market participants voluntarily report their transactions to multiple price index developers the price indices would be more robust; further, Argus volunteers to work with market participants to lighten and remove the burdens associated with reporting to multiple price index developers.<sup>62</sup>

42. Energy Intelligence notes that any additional burden on data providers is marginal and would be outweighed by the benefit of having multiple independent price index developers available to the marketplace.<sup>63</sup>

43. However, NGI and NGSa express concern about encouraging data providers to report to multiple price index developers.<sup>64</sup> NGSa stresses the importance of allowing data providers the flexibility to choose which price index developers they report to, further noting that a data provider's reporting decision should be based on what works best for each company.<sup>65</sup> NGI cautions the Commission against strengthening the language related to reporting to multiple price index developers, because doing so could reduce the number of data providers reporting to price index developers, with the benefits of reporting outweighed by the additional resources needed to report to

additional Commission-approved price index developers.<sup>66</sup>

44. NGI also proposes that the Commission should consider expanding the questions included in the Schedule of Reporting Companies and Price Index Reporting section of the Form No. 552 to require reporting companies to explain why they choose not to voluntarily report transactions to price index developers, if they indicate that they do not price report on Form No. 552.<sup>67</sup>

### 3. Commission Determination

45. We adopt the proposal in the Proposed Revised Policy Statement to encourage all data providers to report their transaction data to as many Commission-approved price index developers as possible. To clarify, there is no requirement that a data provider limit its reporting to only one price index developer. To reiterate, a data provider may report transactions to more than one price index developer.<sup>68</sup>

46. We find that, as stated in the Proposed Revised Policy Statement, the burden of reporting to multiple price index developers has fallen since issuance of the Initial Policy Statement.<sup>69</sup> For example, data providers can now submit transactional data to multiple price index developers via one joint email. Further, we find that reporting transaction data to multiple price index developers will help to increase the robustness of price formation for all price index developers. Energy Intelligence notes that the additional reporting burden to report to multiple price index developers is marginal, and the benefits of reporting to multiple price index developers outweigh the reporting burden.<sup>70</sup> Similarly, APGA and Argus highlight similar benefits from urging data providers to report to multiple price index developers.<sup>71</sup> We agree with commenters that adopting this proposal will provide clarity to data providers that there is no requirement that a data provider limit its reporting to only one price index developer. We also find that reporting to multiple price index developers could lead to more robust price formation.

47. NGI requests that the Commission expand the information requested on the Form No. 552 to require reporting

companies to explain why they did not voluntarily report transaction data to price index developers, if they indicate on their respective annual Form No. 552 submission that they do not price report to price index developers.<sup>72</sup> We decline NGI's request. NGI acknowledges that data providers are not required to, but can voluntarily, report transaction data to price index developers. We see no reason to impose a requirement that would increase the burden on data providers and potentially discourage voluntary reporting, and we decline to adopt this proposal.

## C. Reducing the Self-Audit Burden

### 1. Commission Proposal

48. Under the current price index policy, a data provider should perform a self-audit annually. In the Proposed Revised Policy Statement, the Commission proposed to allow data providers to perform a self-audit on a biennial basis. In other words, every other year a data provider would perform an audit covering the previous two years, if choosing this option.<sup>73</sup>

49. More specifically, the Commission proposed to revise the timing of the standard that a data provider have an independent auditor review the implementation of, and adherence to, the data gathering and submission process adopted by the data provider so that the audit be undertaken on a biennial basis. As stated in the Initial Policy Statement, the results of the audit should continue to be made available to any price index developer to which the data provider submits trade data, and the data provider should permit the price index developer to recommend changes to improve the accuracy and timeliness of data reporting.<sup>74</sup>

50. Further, the Commission stated that it continued to find it acceptable for auditors internal to the data providers to perform the self-audits, in order to avoid raising barriers to voluntary reporting. More specifically, the Commission stated that the internal audits could be performed by a data provider's internal auditor so long as internal audit personnel are independent from the trading and reporting departments and personnel, and the audit follows internal audit standards, such as those prescribed by the Institute of Internal

<sup>59</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 22.

<sup>60</sup> APGA Comments at 12; Argus Comments at 4; Energy Intelligence Comments at 1; EPSA Comments at 2–3.

<sup>61</sup> APGA Comments at 12.

<sup>62</sup> Argus Comments at 4.

<sup>63</sup> Energy Intelligence Comments at 1.

<sup>64</sup> NGI Comments at 4–5; NGSa Comments at 5.

<sup>65</sup> NGSa Comments at 5.

<sup>66</sup> NGI Comments at 4.

<sup>67</sup> *Id.* at 4–5.

<sup>68</sup> 2003 Clarification Order, 105 FERC ¶ 61,282 at P 12 (“A participant, of course, may report transactions to more than one index developer.”)

<sup>69</sup> See Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at PP 22–23.

<sup>70</sup> Energy Intelligence Comments at 1.

<sup>71</sup> APGA Comments at 12; Argus Comments at 4.

<sup>72</sup> NGI Comments at 4–5.

<sup>73</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 24.

<sup>74</sup> Initial Policy Statement, 104 FERC ¶ 61,121 at P 34.

Auditors or other similarly generally accepted auditing standards.<sup>75</sup>

## 2. Comments

51. Commenters who support the proposal generally agree that it would reduce the reporting burden on data providers.<sup>76</sup> Specifically, Argus, EEI, Energy Intelligence, and NGSa believe the proposal would reduce regulatory burden and increase price reporting, with NGSa noting enhanced market liquidity as an indirect benefit.<sup>77</sup>

52. EQT supports the Commission's proposal to retain the ability of data providers to use internal auditors to perform self-audits as long as the internal audit personnel are independent from the trading and reporting department and follow generally accepted auditing standards, noting that this proposal would reduce the cost and time burden for data providers.<sup>78</sup>

53. NGSa also recommends changes to the Commission's Office of Enforcement's audit process. Specifically, NGSa recommends that the Office of Enforcement adopt enhancements to its audit process, including taking a more targeted approach tailoring the scope of audits to a specific set of issues, ensuring data providers understand the audit scope, and committing to a reasonable, set timeframe for audits. NGSa further recommends that the Office of Enforcement refrain from changing or expanding the audit scope without good cause, and communicate any changes in the audit scope, completion date, or status immediately.<sup>79</sup>

## 3. Commission Determination

54. We adopt the proposal in the Proposed Revised Policy Statement to allow data providers to perform a self-audit on a biennial basis. In other words, every two years, a data provider would perform an audit covering the previous two years, if choosing this option.

55. Consistent with the existing requirements of the Commission's price index policy, the results of the audit should be made available to any price index developer to which the data provider submits trade data, and the

data provider should permit the price index developer to recommend changes to improve the accuracy and timeliness of data reporting.

56. EEI, Argus, and NGSa state that the proposed audit changes would reduce regulatory burden and increase price reporting. We agree; adopting this proposal will ease the burden for data providers, which may lead to additional data providers reporting transaction data to price index developers.

57. Further, we continue to find it acceptable for internal auditors to perform the self-audits, in order to avoid raising barriers to voluntary reporting. More specifically, audits can continue to be performed by a data provider's internal auditor as long as internal audit personnel are independent from the trading and reporting departments and personnel, and the audit follows internal audit standards, such as those prescribed by the Institute of Internal Auditors or other similarly generally accepted auditing standards. We find that adequately documented and effective audits by an independent internal or external audit function can serve as an appropriate compliance control. Moreover, we believe the self-audits will ensure that price reporting by market participants is accurate and will support industry confidence in price indices.

58. NGSa recommended several enhancements to the Office of Enforcement's audit process, as summarized above.<sup>80</sup> We emphasize that many of NGSa's recommendations are already an inherent part of the Office of Enforcement's audit process. We decline to adopt NGSa's recommendations in this proceeding because they focus on changes to the Office of Enforcement's audit process, which is unrelated to the Commission's proposal to reduce the self-audit burden on data providers.

## D. Increasing Confidence in Price Indices

### 1. Commission Proposal

59. In the Proposed Revised Policy Statement, the Commission proposed to clarify that, with respect to assessments, a price index developer's code of conduct should inform customers how it makes assessments in its publications and in its data distributions.<sup>81</sup> A price index developer is considered to use a "market assessment" when it uses "market information, other than the trades at the index's specified location,

to determine the value of the index price."<sup>82</sup>

60. Further, the Commission proposed that price index developers indicate in their publications and data distributions when they use a market assessment to calculate a published index price. Specifically, the Commission proposed that price index developers clearly define in their code of conduct a method to determine if a price assessment is made in its data distributions.<sup>83</sup>

## 2. Comments

61. The majority of commenters expressed support for the proposal, with some commenters noting that the market assessment clarification would add transparency to the market.<sup>84</sup> Further, Argus, Energy Intelligence, NGI, and Platts assert that they each currently comply with the proposal regarding market assessment identification.<sup>85</sup> APGA similarly notes that it believes that most price index developers have already adopted the proposed revision.<sup>86</sup>

62. AGA states that the proposal should assist market participants in identifying market assessments by distinguishing price indices calculated from the weighted averages of reported trades from price indices calculated by market assessments. AGA believes this proposal will increase transparency and provide the market with more information about liquidity of certain locations and should promote "confidence in price indices."<sup>87</sup> AGA also notes that AGA members have not voiced concerns regarding a loss of confidence in natural gas markets or concerns that natural gas price indices do not sufficiently reflect locational value of natural gas to permit decision making.<sup>88</sup> APGA notes its concerns with the "proliferation" of market assessments, highlighting that several smaller APGA members have experienced an increase in the number of market assessments at the price index hubs where they purchase natural gas.

<sup>75</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 26.

<sup>76</sup> APGA Comments at 12; Argus Comments at 5; EEI Comments at 5; Energy Intelligence Comments at 1–2; EPSA Comments at 2–3; EQT Comments at 4–5; IMGA Comments at 4; NGI Comments at 5–6; NGSa Comments at 5–6.

<sup>77</sup> Argus Comments at 5; EEI Comments at 5; Energy Intelligence Comments at 1–2; NGSa Comments at 5–6.

<sup>78</sup> EQT Comments at 4–5.

<sup>79</sup> NGSa Comments at 6–8.

<sup>80</sup> NGSa Comments at 6–9.

<sup>81</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 27.

<sup>82</sup> *Id.* P 28.

<sup>83</sup> *Id.* P 30.

<sup>84</sup> American Gas Association (AGA) Comments at 3–5; APGA Comments at 13; Argus Comments at 5; California Independent System Operator Corporation (CAISO) Comments at 4–5; Energy Intelligence Comments at 2; EQT Comments at 8; IMGA Comments at 4; NGI Comments at 6; Platts Comments at 4.

<sup>85</sup> Argus Comments at 5; Energy Intelligence Comments at 2; NGI Comments at 6; Platts Comments at 4.

<sup>86</sup> APGA Comments at 13.

<sup>87</sup> AGA Comments at 5.

<sup>88</sup> *Id.*

APGA welcomes the proposed policy changes.<sup>89</sup>

63. EQT notes that, subsequent to the guidelines established in Price Index Order, no process has been established to allow the Commission to reconfirm the liquidity of price index developers' indices once they have been included in natural gas pipeline tariffs.<sup>90</sup> EQT explains that the use of price indices in natural gas pipeline tariffs to settle imbalances or determine penalties is different from their use in commercial transactions; EQT stresses the importance of the integrity of price indices, since the use of set price indices as a reference point in Commission-jurisdictional tariffs does not present shippers with an option to choose their preferred price index and, therefore, has day-to-day financial impacts on "essentially captive parties."<sup>91</sup> Finally, EQT states that they do not believe that market assessments should be permitted to substitute for the relatively small minimum trading liquidity requirements adopted in the Price Index Order, and the Commission should so clarify in a revised policy statement.<sup>92</sup>

64. CAISO requests that the Commission require price index developers to report the daily volume traded, number of transactions, and number of counterparties, even on days when price index developers use market assessments. CAISO asserts that, without the above data points, RTOs/ISOs may be unable to assess liquidity based on the Commission's proposal for at least 180 continuous days out of the most recent 365 days. Alternatively, CAISO asks the Commission for additional clarity on how RTOs/ISOs should evaluate price index liquidity when price index developers use market assessments.<sup>93</sup> CAISO also requests that the Commission specify the extent to which price index developers must report criteria-related data when they rely on market assessments rather than weighted averages.<sup>94</sup>

65. Argus requests that the Commission study whether the increase in market assessments, coupled with the requirement that price index developers publish when they use a market assessment, affects market participant contracting practices. Argus elaborates that market participants may include an alternative pricing methodology to

replace a particular hub in their contracts, explaining that if the hub is subject to market assessments, it could indicate to market participants that it is a less liquid hub.<sup>95</sup>

### 3. Commission Determination

66. Consistent with the proposal in the Proposed Revised Policy Statement, we clarify that, with respect to assessments, a Commission-approved price index developer should indicate in its publications and data distributions when it uses a market assessment to calculate a published index price. Further, under the revised standards for price index developers, each price index developer's code of conduct should inform customers how it uses market assessments in calculating price indices by specifying the types of data it may use in producing a market assessment. Price index developers should also clearly explain in their code of conduct how to determine if a price assessment is made in its publications and its data distributions.

67. We find that, as noted in the Proposed Revised Policy Statement, adopting these proposals will enhance price index assessment transparency and give market participants better information about the liquidity of certain hub locations.<sup>96</sup> We agree with AGA that these modifications to the Commission's price index policy will increase transparency of price index development, and more generally, natural gas price formation. We find that these modifications may, in turn, increase the industry's confidence in price indices. Finally, we agree with AGA and APGA that these modifications will give market participants a mechanism to identify market assessments.<sup>97</sup> We find that explicitly requiring price index developers to indicate when and how they use a market assessment will provide more clarity to market participants and increase price index assessment transparency.

68. In their comments, both EQT and CAISO request that the Commission clarify how market assessments might be used when determining price index liquidity. EQT specifically states that they do not believe market assessments should be permitted as a substitute for the current liquidity requirements, as those requirements are already relatively small. A market assessment is only used when a price index developer

cannot determine a value for the index price using the trades at the index's specified location, indicating low liquidity for the specified index. Therefore, price index developers should clearly identify assessments in their publications and data distribution and to explain how to identify price indices that have been assessed in their code of conduct.<sup>98</sup> When measuring the average liquidity of a price index proposed for reference in a Commission-jurisdictional tariff, the Commission will consider any days the price index is assessed to have zero volume, zero transactions, and/or zero counterparties. The Commission's price index liquidity requirements<sup>99</sup> for price indices proposed for reference in Commission-jurisdictional tariffs still apply to price indices that use market assessments. However, we note that use of market assessments may affect the measured liquidity at any given price index when it is proposed for reference in a Commission-jurisdictional tariff because the Commission considers any days the price index is assessed to have zero volume, zero transactions, and/or zero counterparties.

69. CAISO also requests that the Commission specify the extent to which price index developers must report criteria-related data (*i.e.*, daily volume traded, number of transactions, and number of counterparties), even on days when price index developers publish market assessments in lieu of price indices.<sup>100</sup> We understand that price index developers calculate market assessments when there is little or no liquidity at a hub on any given day. If a Commission-approved price index developer finds that the transaction data reported at a hub is insufficient to form a price, a price index developer may choose to use other information to determine the price at the hub. As long as a price index developer clearly states its methodology to identify market assessments, we find that an index developer need not report transaction data (*i.e.*, daily volume traded, number of transactions, and number of counterparties) for that hub. We decline to require such reporting given that Commission-approved price index developers may use few (if any) of the reported transactions in developing the assessment, thus limiting the value of such reporting.

70. Additionally, Argus requests that the Commission study whether the

<sup>89</sup> APGA Comments at 9, 13.

<sup>90</sup> EQT Comments at 5–6 (citing Price Index Order, 109 FERC ¶ 61,184 at P 42).

<sup>91</sup> *Id.* at 6.

<sup>92</sup> *Id.* at 8.

<sup>93</sup> CAISO Comments at 4–5.

<sup>94</sup> *Id.* at 2.

<sup>95</sup> Argus Comments at 6.

<sup>96</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 30.

<sup>97</sup> AGA Comments at 5; APGA Comments at 13.

<sup>98</sup> For example, some price index developers designate a market assessment by indicating a price index having zero volume, zero transactions, and zero counterparties.

<sup>99</sup> Price Index Order, 109 FERC ¶ 61,184 at P 66.

<sup>100</sup> CAISO Comments at 4–5.

increase in market assessments, coupled with the requirement that price index developers publish when they use a market assessment, affects market participant “contracting practices.”<sup>101</sup> Though we acknowledge that market participants may undertake alternative pricing methodologies in future contracting practices, Argus has not explained the benefit of studying the impact of market assessments on market participant contracting practices. Accordingly, we decline to undertake such a study.

*E. Ensuring Price Index Developers’ Continued Adherence to the Price Index Policy*

1. Commission Proposal

71. In the Initial Policy Statement, the Commission set forth five standards for price index developers to demonstrate that their internal processes were sufficient to qualify as a Commission-approved price index developer and, thus, have their price indices referenced in Commission-jurisdictional tariffs.<sup>102</sup> As detailed above, those five standards include: (1) A code of conduct and confidentiality; (2) completeness; (3) data verification, error correction, and monitoring; (4) verifiability; and (5) accessibility. After the Commission issued the *Policy Statement*, 10 price index developers made filings with the Commission asserting that they complied with these standards. In the Price Index Order, the Commission approved those price index developers as satisfying all or substantially all of the standards.<sup>103</sup> Since then, the Commission has granted approval to three additional price index developers.<sup>104</sup>

72. In the Proposed Revised Policy Statement, the Commission proposed that a Commission-approved price index developer should seek re-approval from the Commission every seven years that it continues to meet the five standards for price index developers. More specifically, the

Commission proposed that, beginning six months after the effective date of this proposal, interstate natural gas pipelines and public utilities proposing to use price indices in jurisdictional tariffs will no longer be entitled to the rebuttable presumption that a price index developer’s price indices produce just and reasonable rates unless the price index developer has obtained re-approval from the Commission within the last seven years that it continues to meet the criteria set forth in the Initial Policy Statement.

2. Comments

73. Price index developers generally support the Commission’s proposal for price index developers to obtain re-approval every seven years as a way to ensure their continued adherence to the Commission’s price index policy.<sup>105</sup>

74. Platts notes that the Commission has not described the re-approval requirements or re-approval process.<sup>106</sup> As a result, Platts proposes that price index developers demonstrate adherence to the International Organization of Securities Commissions (IOSCO) Principles for Oil Price Reporting Agencies for re-approval, as the IOSCO principles call for a third-party review on an annual basis and would add integrity to the re-approval process.<sup>107</sup>

75. EQT also seeks further clarification on whether or how the use of market assessments would factor into the “every seven-year” determination as to whether a price index developer continues to meet the Commission’s threshold liquidity standard.<sup>108</sup>

3. Commission Determination

76. We adopt the proposal in the *Proposed Revised Policy Statement* for each Commission-approved price index developer to seek re-approval from the Commission every seven years that it continues to fully or substantially meet the five standards for publishing price indices. Beginning six months after the effective date of this revision, interstate natural gas pipelines and public utilities proposing to use price indices in jurisdictional tariffs will no longer be entitled to the rebuttable presumption that a price index developer’s price indices produce just and reasonable rates unless the price index developer has obtained approval or re-approval

from the Commission within the last seven years.<sup>109</sup>

77. Under the Commission’s price index policy, after the Commission approves a price index developer, the Commission has no further verification process to ensure that price index developers continue to adhere to the five standards for publishing price indices. As a result, for most of the currently approved price index developers, the Commission has not reexamined their compliance with the price index developer standards in 18 years, despite the myriad changes in natural gas markets that have occurred during that time.<sup>110</sup> Having price index developers seek re-approval from the Commission every seven years will aid the Commission in ensuring that Commission-jurisdictional tariffs and rates that reference price indices remain just and reasonable.

78. In responses to comments from Platts asserting that the Commission has not yet described the re-approval process, we clarify that we have not changed the guidelines for the Commission’s approval process for a price index developer’s methodology.<sup>111</sup> As such, price index developers seeking Commission approval, or re-approval, should continue to follow the guidelines stated in the Commission’s Initial Policy Statement.<sup>112</sup>

79. EQT seeks clarity on whether the use of market assessments would factor into the Commission’s approval of a price index developer.<sup>113</sup> We find that the use of market assessments will not affect Commission approval of a price index developer as long as the price index developer’s code of conduct adequately describes the methodology for use of market assessments as required by this Revised Policy Statement.

*F. Modifying Liquidity Standards for Price Index References*

1. Commission Proposal

80. In the Price Index Order, the Commission adopted a set of criteria

<sup>109</sup> Consistent with prior practice, price index developers would file for both initial Commission approval and re-approval in the PL03–3–000 docket.

<sup>110</sup> For instance: Multiple price index developers now receive transactions from ICE; at some hub locations, index-based “daily basis” transactions are now being used to create next-day indices; and market assessments are being used to price historically liquid hub locations where liquidity declined.

<sup>111</sup> Platts Comments at 3.

<sup>112</sup> Initial Policy Statement, 104 FERC ¶ 61,121, *clarified*, 2003 Clarification Order, 105 FERC ¶ 61,282, *clarified*, 2005 Clarification Order, 112 FERC ¶ 61,040.

<sup>113</sup> EQT Comments at 8.

<sup>101</sup> Argus Comments at 6.

<sup>102</sup> Initial Policy Statement, 104 FERC ¶ 61,121 at P 33.

<sup>103</sup> Price Index Order, 109 FERC ¶ 61,184 at P 24 (approving indices published by Argus, Bloomberg L.P., Btu/Data Transmission Network, Dow Jones and Company, Energy Intelligence, ICE, Io Energy LLC, NGI, Platts, and Powerdex, Inc. (Powerdex)).

<sup>104</sup> Many of the original indices have ceased publication or been acquired and rebranded and not reapproved. As such, only five approved price index developers remain: Argus, Energy Intelligence (Natural Gas Week), NGI, Platts, and Powerdex. Although it was not pre-approved, SNL Energy continues to publish indices after purchasing IO Energy LLC and BTU/Data Transmission Network in 2004 and 2009, respectively.

<sup>105</sup> Argus Comments at 6; Energy Intelligence Comments at 2; NGI Comments at 6; Platts Comments at 3.

<sup>106</sup> Platts Comments at 3–4.

<sup>107</sup> *Id.*

<sup>108</sup> EQT Comments at 6.

delineating a price index developer's minimum reported level of activity at a particular trading location in order for that price index trading at that location to be referenced in a Commission-jurisdictional tariff—effectively known as liquidity standards.<sup>114</sup>

81. The Commission found that interstate natural gas pipelines and utilities, when proposing new natural gas and electric price indices to be used in Commission-jurisdictional tariffs, should confirm that the proposed price index at defined location(s) have met the minimum liquidity standards over a 90-day period for daily or weekly indices, and a six-month period for monthly indices.<sup>115</sup> The Commission did not specify any timeframe during which the applicant should show that the proposed price index at a defined location meets the liquidity threshold. As a result, interstate natural gas pipelines and RTOs/ISOs have used different 90-day or six month-periods to submit data on price indices at defined locations in order to assess liquidity.<sup>116</sup>

82. In the Proposed Revised Policy Statement, the Commission proposed to modify the review period over which a natural gas price index at a defined location should meet the minimum level of activity for natural gas price indices referenced in Commission-jurisdictional tariffs to at least 180 continuous days out of the most recent 365 days from the filing date of any such proposal.<sup>117</sup> The proposed modification of liquidity standards was intended to provide clarity to market participants that propose natural gas price index references in their Commission-jurisdictional tariff filings.

83. Specifically, the Commission proposed to revise the liquidity criteria established in the Price Index Order as follows (revised language shown in *italics*). The Commission also proposed to remove the term “daily” from the daily, weekly, and monthly liquidity requirements to provide clarity concerning the conditions that should be met for those types of price indices.

Daily or hourly indices should meet at least one of the following conditions, on

average, for all non-holiday weekdays *for at least 180 continuous days out of the most recent 365 days:*

1. Average volume traded of at least 25,000 million Btu (MMBtu) *per day* for natural gas or 2,000 Megawatt hours (MWh) *per day* for power; or

2. Average number of transactions of five or more *per day*; or

3. Average number of counterparties of five or more *per day*.

Weekly indices should meet at least one of the following conditions on average for all weeks *for at least 180 continuous days out of the most recent 365 days:*

1. Average volume traded of at least 25,000 MMBtu *per day* for gas or 2,000 MWh *per day* for power; or

2. Average number of transactions of eight or more *per week*; or

3. Average number of counterparties of eight or more *per week*.

Monthly indices should meet at least one of the following conditions on average *for at least 180 continuous days out of the most recent 365 days:*

1. Average volume traded of 25,000 MMBtu *per day* for gas or 2,000 MWh *per day* for power; or

2. Average number of transactions of ten or more *per month*; or

3. Average number of counterparties of ten or more *per month*.

## 2. Comments

84. Commenters generally supported the Commission's proposed revisions to the review period over which price indices at defined locations should meet the minimum level of activity. For instance, EQT notes that the proposed revisions would enhance the accuracy of the price indices referenced in Commission-jurisdictional tariffs, pricing of physical transactions, and settlement of financial hedges.<sup>118</sup>

85. CAISO raises several clarifying questions regarding applying the revised liquidity criteria. CAISO asks for clarification regarding how to address a scenario where a price index becomes insufficiently liquid based on the Commission's criteria, and requests that the Commission clarify that RTOs/ISOs are still obligated to comply with their tariffs, even where a price index becomes insufficiently liquid. CAISO also requests that the Commission clarify how often CAISO must evaluate its referenced price indices for liquidity (*e.g.*, daily, annually, some other metric). Additionally, CAISO asks that the Commission clarify the meaning of “on average” in its proposed liquidity criteria and whether the term is applied to the liquidity criteria independent of

its application to each criterion. Lastly, CAISO requests the Commission clarify whether CAISO must comply with the proposed liquidity criteria every time it uses an index price, or whether it may seek relief from applying those criteria where liquidity and the use of the index price is less critical, further requesting that the Commission identify cases where price indices must satisfy the liquidity criteria and other cases where price indices need not satisfy the liquidity criteria.<sup>119</sup>

86. EQT questions why the Commission did not consider a similar increase to the remaining liquidity criteria language laid out in the Price Index Order. As a less burdensome alternative, EQT recommends that the Commission consider requiring price index developers, upon re-approval, to meet at least two of the three liquidity metrics at each price location.<sup>120</sup>

87. NGSAs asks the Commission to apply the proposed liquidity criteria on a prospective basis, applying the criteria to future tariff filings that propose new or updated price index locations and allowing previously approved price index locations to remain in effect. NGSAs explains that applying the new criteria to previously approved price index locations could inadvertently disrupt contractual arrangements based on natural gas pipeline tariffs previously approved by the Commission.<sup>121</sup>

88. Argus opposes the proposed changes and states that new liquidity criteria will likely have unintended and negative consequences and urges the Commission to leave the existing liquidity criteria intact or solicit alternative proposals. Argus cautions the Commission against increasing current liquidity criteria by expanding the time period to 180 days, contending the proposed timeframe may not be predictive of a subsequent period for which a tariff may apply. Argus also states that expanding the review period for price index locations may inadvertently reduce the number of price indices that qualify for use in Commission-jurisdictional tariffs, resulting in only a core group of very liquid hubs meeting the proposed liquidity standards.<sup>122</sup>

89. If the Commission adopts the 180-day proposal, Argus recommends that the Commission revisit and reconsider the specific information to accompany market assessments for locations possibly rendered less liquid by the 180-day change. Argus asserts that

<sup>114</sup> Price Index Order, 109 FERC ¶ 61,184 at P 66.

<sup>115</sup> *Id.* P 65.

<sup>116</sup> *E.g.*, in Docket No. RP20–59–000, filed on October 10, 2019, Dominion Energy Transmission Inc. submitted transactions for a price index at a defined location for the period from June 4, 2019 to August 30, 2019. In Docket No. RP19–1395–000, filed on July 24, 2019, Southern Natural Gas Company, L.L.C. submitted transactions for a price index at a defined location from April 1, 2019 to July 16, 2019. Both of these filings were accepted given that the natural gas pipelines provided 90 days of data, but the latter filing included a review period closer to the date of filing.

<sup>117</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 38.

<sup>118</sup> EQT Comments at 6.

<sup>119</sup> CAISO Comments at 3–4.

<sup>120</sup> EQT Comments at 6–7.

<sup>121</sup> NGSAs Comments at 8–9.

<sup>122</sup> Argus Comments at 7–8.

customers and market participants that do business at less-liquid locations may wish to have more detail about assessment methodologies on each instance of publication. Argus also states that it is prepared to provide such relevant data.<sup>123</sup>

90. Furthermore, Argus recommends that the Commission reconsider applying the liquidity standards to daily electric price indices. Argus elaborates that daily electric price indices are most predominantly used in the Western Electricity Coordinating Council, where power is traded in standard packages of 25 MWh for each peak or off-peak hour, smaller than the standard package for the remainder of the country. Argus states that in order to meet the 2,000 MWh per day volume criteria of the liquidity standards, an index would need either five trades during each of the 16 peak hours or 10 trades during each of the eight off-peak hours. Argus adds that it does not believe the Commission wants to inject a lack of clarity and encourages further discussion of the application of the liquidity standards to electricity.<sup>124</sup>

### 3. Commission Determination

91. In the Proposed Revised Policy Statement, the Commission stated generally that the proposed modifications would apply solely to natural gas price indices.<sup>125</sup> We recognize, however, that the proposed modifications to the liquidity standards would have, by their terms, applied to both natural gas and electric price indices (by referencing both MMBtu and MWh). Consistent with the Commission's earlier general statement, we adopt the proposed liquidity standards only for natural gas price indices. As noted below, Commission staff will continue to review potential reforms related to electric price index standards, including for the liquidity standards.

92. Accordingly, we adopt the revised liquidity standards for natural gas price indices as follows: (revised language shown in *italics*):

Daily *natural gas price* indices should meet at least one of the following conditions, on average, for all non-holiday weekdays *for at least 180 continuous days out of the most recent 365 days*:

1. Average volume traded of at least 25,000 million Btu (MMBtu) *per day*; or
2. Average number of transactions of five or more *per day*; or

3. Average number of counterparties of five or more *per day*.

Weekly *natural gas price* indices should meet at least one of the following conditions on average for all weeks *for at least 180 continuous days out of the most recent 365 days*:

4. Average volume traded of at least 25,000 MMBtu *per day*; or
5. Average number of transactions of eight or more per week; or
6. Average number of counterparties of eight or more per week.

Monthly *natural gas price* indices should meet at least one of the following conditions on average *for at least 180 continuous days out of the most recent 365 days*:

4. Average volume traded of 25,000 MMBtu *per day*; or
5. Average number of transactions of ten or more per month; or
6. Average number of counterparties of ten or more per month.

93. We clarify that a natural gas price index must meet at least one particular criterion for 180 continuous days and that alternating between multiple criteria in the 180-day time period is not sufficient to meet the index liquidity standard. The liquidity standards for electric price indices remain unchanged.

94. These revisions to the liquidity standards for natural gas indices are based on changes in natural gas markets. We find that shifts in regional production and market demand areas have resulted in changes in the liquidity of natural gas price index hubs across the United States. For example, although the Houston Ship Channel natural gas trading hub in South Texas historically was considered to be liquid with nearly 100 deals/day in 2008, liquidity has since fallen significantly. In 2021, the hub averaged 6 deals/day and on certain days did not have any transactions. In light of the dynamic and seasonal nature of natural gas trading, some natural gas price indices may not provide a reasonable representation of natural gas costs consistently enough to be included within Commission-jurisdictional tariffs. Further, we find that additional clarity would help to ensure applicants' approach to assessing liquidity is reflective of the most recent market activity. Additionally, we conclude that expanding the review period will ensure that natural gas price indices referenced in Commission-jurisdictional tariffs are sufficiently liquid, ultimately benefiting customers who are subject to the tariff provisions.

95. In response to EQT's concerns, we reiterate that applicants must present data that demonstrate a price index at a defined location meets a single liquidity

criterion for 180 continuous days. EQT suggests that the Commission should have strengthened each of the three criteria or required a price index to meet at least two of the three criteria at each price location.<sup>126</sup> Consistent with the *Price Index Order*, we find that a price index is sufficiently liquid if it meets one of the three criteria based on transaction volumes, number of transactions, or number of counterparties. We do not adopt EQT's recommendation to require price indices to meet multiple criteria as we find that such additional requirement would unnecessarily limit flexibility. We find that the modifications to the review period outlined in the *Proposed Revised Policy Statement* provide clarity and ensure that natural gas price indices referenced in Commission-jurisdictional tariffs are sufficiently liquid.

96. In response to the concerns of NGA and CAISO, we reiterate that the liquidity standards apply to price indices when proposed in a tariff. We clarify that Commission-regulated entities will not be required to evaluate the price indices currently referenced in their tariffs to ascertain whether they meet the new criteria set forth above. Nonetheless, we encourage entities to periodically reevaluate their tariffs to ensure that referenced price indices have maintained adequate liquidity. If an entity wishes to revise a price index referenced in its Commission-jurisdictional tariff, it must file a proposed tariff revision with the Commission and provide supporting information that the new price index meets the established liquidity criteria. Other than the revisions adopted here, the underlying criteria remain unchanged from the *Price Index Order*. Also, consistent with the *Price Index Order*, the changes made herein will be applied on a prospective basis from the effective date of this Revised Policy Statement.

97. We disagree with Argus<sup>127</sup> that adopting the proposed liquidity standards would create a significant burden for jurisdictional entities with unintended and negative consequences. Rather, the changes to the liquidity standards encourage use of sufficiently liquid natural gas price indices and ensure that proposed tariff changes are held to consistent standards. Consistent with the *Price Index Order*, applicants still have flexibility to submit any price index for use in a Commission-

<sup>126</sup> EQT Comments at 6–7.

<sup>127</sup> We do not address Argus's arguments against the application of the proposed revisions to the liquidity standards to electric price indices, Argus Comments at 9, because we are not applying those proposed revisions to electric price indices.

<sup>123</sup> *Id.* at 8.

<sup>124</sup> *Id.* at 7, 9.

<sup>125</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 40.

jurisdictional tariff, as long as they provide relevant data demonstrating liquidity based on one of the defined criteria (*i.e.*, transaction volumes, number of transactions, or number of counterparties). While Argus is correct in stating that a particular 180-day period may not be predictive of a future time period, we do not find this a convincing argument against the changes proposed to the liquidity standards for natural gas price indices. Using a specified time period to measure liquidity establishes a baseline and ensures consistent treatment for price indices. Argus also suggests that the Commission's adoption of the proposed changes should be conditioned on the reevaluation of other factors and the solicitation of alternatives; however, we are not persuaded that such a broader inquiry is warranted at this time given the limited changes to the liquidity standards.

#### *G. Additional Policy Changes to Electric Indices and Electric Price Index Developers*

98. The modifications in the Proposed Revised Policy Statement apply solely to natural gas price indices and natural gas price index developers.<sup>128</sup> The Commission stated that staff would conduct outreach to explore the need for, and scope of, any potential policy updates for the electric industry.<sup>129</sup> We decline to update our policy for electric price indices in response to the comments submitted by Argus, EPSA and Platts.<sup>130</sup> Nonetheless, we continue to consider the need for, and scope of, any potential modifications to the price index policy for the electric industry.

#### *H. Other Issues Raised By Commenters*

##### 1. Comments

99. Several commenters raised issues that were not specific to proposals in the Proposed Revised Policy Statement.

100. APGA expresses concerns regarding Operational Flow Order penalties during extreme events such as the February 2021 winter storm. APGA argues that the Commission should further examine this issue in the Commission's review of the market events that occurred as a result of that February 2021 winter storm.<sup>131</sup> APGA also recommends the Commission include periodic reports on price index liquidity trends in its State of the Markets report. APGA specifically

requests the Commission provide more transparency on the types of entities that are price reporting.<sup>132</sup>

101. Platts believes that price reporting and the underlying methodology should evolve and incorporate changing markets and trading dynamics. Platts urges the Commission to explore "other ways" to include "all relevant trade information into indices, such as including daily basis trades."<sup>133</sup> Platts cites the increase in liquidity at the Florida city-gates due to their inclusion of "daily basis trades" at the hub<sup>134</sup> but did not further elaborate in its comments on how to include additional trade information into price indices.

102. AFPA/PGC argue the proposals in the Proposed Revised Policy Statement do not address the shrinking number of price indices that exist today. AFPA/PGC further state that the ability of one or two price index developers to exert market power over the price of their subscriptions undermines the Commission's efforts to increase reporting to price index developers because market participants cannot afford price index developer subscriptions. Accordingly, AFPA/PGC suggest that the Commission include subscription cost in the accessibility standard for price indices, stating that this revision is appropriate given the goal of the Commission's fifth standard, the accessibility standard, to ensure that all interested customers have reasonable access to published price indices on a timely basis.<sup>135</sup>

103. AFPA/PGC suggests the Commission should consider whether the number of remaining price index developers is sufficient to ensure that price index developers, as a whole, meet the accessibility standard.<sup>136</sup> Further, AFPA/PGC request the Commission consider establishing a minimum threshold number of price index developers needed for adequate competition, triggering an investigation of the competition in the price index developer market.<sup>137</sup>

104. AFPA/PGC also suggest that the Commission should consider investigating the creation of a non-profit or government-maintained source of trade data, further noting that the agency that oversees the trade data could "establish a fee to recover the cost of providing this service that would likely be more feasible for market

participants than attempting to maintain subscriptions to the for-profit indices."<sup>138</sup>

##### 2. Commission Determination

105. The Proposed Revised Policy Statement did not propose reforms related to these issues. Therefore, we decline to address them here.

#### *I. Safe Harbor Policy for Data Providers to Price Index Developers Notice of Proposed Rulemaking*

106. Concurrent with issuing the Proposed Revised Policy Statement, the Commission also issued the *Safe Harbor Policy for Data Providers to Price Index Developers Notice of Proposed Rulemaking*.<sup>139</sup> The Commission proposed to amend the Commission's regulations to codify the Safe Harbor Policy established in the Commission's *Policy Statement*. Although the Commission is not acting on the notice of proposed rulemaking at this time, the Safe Harbor Policy in the Commission's Initial Policy Statement remains in effect.

#### **III. Information Collection Statement**

107. The Paperwork Reduction Act (PRA) requires each federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements) directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements (including deletion, revision, or implementation of new requirements). Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number.

108. The Commission solicits comments from the public on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility and clarity of the information collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. Specifically, the Commission asks that any revised burden or cost estimates submitted by commenters be supported

<sup>128</sup> Proposed Revised Policy Statement, 173 FERC ¶ 61,237 at P 40.

<sup>129</sup> *Id.*

<sup>130</sup> Argus Comments at 9–10; EPSA Comments at 3; Platts Reply Comments at 2–3.

<sup>131</sup> APGA Comments at 8–9.

<sup>132</sup> *Id.* at 11.

<sup>133</sup> Platts Comments at 4.

<sup>134</sup> *Id.*

<sup>135</sup> See AFPA/PGC Comments at 7.

<sup>136</sup> AFPA/PGC Comments at 7.

<sup>137</sup> *Id.* at 6–7.

<sup>138</sup> *Id.* at 5–6.

<sup>139</sup> 173 FERC ¶ 61,238 (2020).

by sufficient detail to understand how the estimates are generated.

109. This revised policy statement will affect the existing data collection: FERC-549, NGPA Title III Transactions

and NGA Blanket Certificate Transactions and FERC-552, Annual Report of Natural Gas Transactions. 110. Estimates of the PRA-related burden and cost<sup>140</sup> follow. The

following table summarizes the estimated increases and decreases in burden due to the proposed policy changes above.

#### MODIFICATIONS DUE TO THE REVISED POLICY STATEMENT IN DOCKET NO. PUBLIC LAW 20-3

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden (hrs.) & cost (\$) per response (4)	Total annual burden hrs. & total annual cost (\$) (3) * (4) = (5)
<b>Burden Reductions<sup>141</sup> to FERC-549</b>					
Data Providers—perform biennial self-audit (not annual).	125	.5	62.5	80 hrs.; \$6,960 .....	5,000 hrs.; \$435,000.
Data Providers—provide month-ahead (not day-ahead on a daily basis) <sup>142</sup> .	11	<sup>143</sup> 249	2,739	4 hrs.; \$348 .....	10,956 hrs.; \$953,712.
Reductions to FERC-549 .....					15,956 hrs.; \$1,388,172.
<b>Burden Increases to FERC-549</b>					
Price Index Developers—re-certify every 7 yrs.	6	0.14	0.84	320 hrs.; \$27,840 ..	268.8 hrs.; \$23,385.6.
Price Index Developers—code of conduct & confident.; & inform customers.	6	1	6	80 hrs.; \$6,960 .....	480 hrs.; \$41,760.
Price Index Developers—identify assessed index price vs. calculated.	6	1	6	80 hrs.; \$6,960 .....	480 hrs.; \$41,760.
Increases to FERC-549 .....					1,228.80 hrs.; \$106,905.60.
Net Total Reduction .....					14,727.2 hrs.; \$1,281,266.40.

#### FORM NO. 552 MODIFICATIONS DUE TO THE REVISED POLICY STATEMENT IN DOCKET NO. PUBLIC LAW 20-3

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden (hrs.) & cost (\$) per response (4)	Total annual burden hrs. & total annual cost (\$) (3) * (4) = (5)
<b>Burden Increases<sup>144</sup> to FERC-552</b>					
Form No. 552 filers—indicate if they report their next-day and/or next-month transactions.	<sup>145</sup> 1,163	1	1,163	.25 hrs.; \$21.75 .....	290.75 hrs.; \$25,295.25.
Increases to FERC-552 .....					290.75 hrs.; \$25,295.25.
Net Total Increase .....					290.75 hrs.; \$25,295.25.

The Commission seeks comments on the burden and cost related to complying with the proposed revised policy statement.

*Title:* FERC-549, NGPA Title III Transactions and NGA Blanket Certificate Transactions.

*OMB Control No.:* 1902-0086.

*Respondents:* Natural Gas Data Providers (Market Participants That Report Transaction Data to Price Index Developers) and Price Index Developers.

*Frequency of Responses:* As discussed.

*Title:* FERC-552, Annual Report of Natural Gas Transactions.

*OMB Control No.:* 1902-0242.

*Respondents:* Wholesale natural gas market participants (Market Participants That Report Transaction Data to Price

<sup>140</sup> The Commission staff estimates that industry is similarly situated in terms of hourly cost (for wages plus benefits). Based on the Commission's Fiscal Year (FY) 2021 average cost of \$180,703/year (for wages plus benefits, for one full-time employee), \$87.00/hour is used.

<sup>141</sup> The burden reductions are provided for information and comment. To be conservative, the Commission may not remove the hours from its

information collection estimates in the OMB-approved inventory.

<sup>142</sup> Commission staff assumes respondents with 2020 estimated volumes of next-month and physical basis transactions reported to price index developers that exceeded two thirds of their total estimated volumes reported to price index developers will no longer report their next-day transactions to price index developers.

<sup>143</sup> We are allowing companies to report just monthly, instead of monthly and daily. The figure (249 annual responses per respondent) relates to reporting on all non-holiday trading days.

<sup>144</sup> The burden reductions are provided for information and comment. To be conservative, the Commission may not remove the hours from its information collection estimates in the OMB-approved inventory.

<sup>145</sup> Total Form No. 552 filers and their affiliates.

Index Developers) and Price Index Developers.

*Frequency of Responses:* As discussed.

*Necessity of the Information:* The collection of this information helps to provide accuracy and transparency to the formation of natural gas price indices.

*Internal Review:* These requirements conform to the Commission's goal for efficient information collection, communication, and management. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, Attn: Ellen Brown, Office of the Executive Director, email: [DataClearance@ferc.gov](mailto:DataClearance@ferc.gov), or phone: (202) 502-8663.

#### IV. Document Availability

111. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

112. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

113. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502-6652 (toll free at 1-866-208-3676) or email at [ferconlinesupport@ferc.gov](mailto:ferconlinesupport@ferc.gov), or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at [public.referenceroom@ferc.gov](mailto:public.referenceroom@ferc.gov).

#### V. Effective Date

114. This Policy Statement will become effective on December 31, 2022.

By the Commission. Commissioner Danly is concurring with a separate statement attached.

Issued: April 21, 2022.

**Debbie-Anne A. Reese,**  
*Deputy Secretary.*

#### Appendix A: Commenters

- (1) American Public Gas Association (APGA)
- (2) EQT Energy LLC (EQT)
- (3) S&P Global Platts (Platts)
- (4) Electric Power Supply Association (EPSA)
- (5) Energy Intelligence Group (Energy Intelligence)
- (6) American Gas Association (AGA)
- (7) Natural Gas Supply Association (NGSA)
- (8) Natural Gas Intelligence Press Inc (NGI)
- (9) Argus Media Inc. (Argus)
- (10) California Independent System Operator Corporation (CAISO)

(11) American Forest & Paper Association and Process Gas Consumers Group (AFPA/PGC)

(12) Edison Electric Institute (EEI)

(13) Interstate Municipal Gas Agency (IMGA)

#### Appendix B: Proposed Changes to Form No. 552

To reduce the burden on natural gas data providers who choose to report their fixed-price transactions to natural gas price index developers, the *Revised Policy Statement* modifies the Commission's price index policy to allow data providers to now report their next-day or the next-month transactions, or both, to price index developers.

As a result of this policy change, a minor modification needs to be made to FERC Form No. 552, Annual Report of Natural Gas Transactions (Form No. 552) to ensure that the Commission accurately collects information from market participants who report their natural gas transactions to price index developers. On May 1 of each year, filers submit the Form No. 552 which collects aggregated physical natural gas transactional information from market participants that buy or sell more than 2.2 TBtus during the previous calendar year. Page 3 of Form No. 552 requires market participants to identify whether they report their transactions to price index developers. To account for the change in policy, the Commission modifies Form No. 552 to allow filers to identify if they report their next-day *and/or* their next-month fixed-price and physical basis transactions to price index developers. The revision to page 3 of Form No. 552 is set forth below in highlight and requires filers and their affiliates to now identify if they report their next-day (identified below as "Daily") and/or their next-month fixed-price and physical basis transactions (identified below as "Monthly") to price index developers.

**BILLING CODE 6717-01-P**

Name of Respondent*	This Report is: (1) <input checked="" type="checkbox"/> An Original (2) <input type="checkbox"/> A Resubmission	Date of Report* (MM/DD/YYYY)	Year of Report End of
			2021

**Schedule of Reporting Companies and Price Index Reporting**

List the name of the Respondent, Reporting Company and any Affiliates that are included in this filing. Then answer questions (b) - (e) for each company listed. Respondent\* should complete the "Purchase and Sales Information" schedule on page 4 only once for these companies collectively. \*An asterisk means that the previous term is explained in more detail in the definitions.

- 1) Did the Respondent, Reporting Company\* or any Affiliates listed in column (a) report any transaction information to Price Index Publishers\* during the Report Year\*?
- 2) If you answered yes on column (b), did the Respondent, Reporting Company\* or any Affiliates comply with the regulations governing reporting to Price Index Publishers\* pursuant to 18 C.F.R. § 284.403. If you answered no on column (b), the software will automatically answer Not applicable or NA in column (c).
- 3) Were the Respondent, Reporting Company or the Affiliate's reportable natural gas purchases\* equal to or greater than 2.2 million MMBtu for the Report Year\*?
- 4) Were the Respondent, Reporting Company or the Affiliate's \* reportable natural gas sales\* equal to or greater than 2.2 million MMBtu for the Report Year\*?

Line No.	Legal Name (a)	Report Transactions? (b)		Comply with Regulations? (c)	Reportable Purchases >= 2.2 Million MMBtu (d)	Reportable Sales >= 2.2 Million MMBtu (e)
		Daily	Monthly			
1						
2						
3						
4						
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## United States of America

## Federal Energy Regulatory Commission

Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs

Docket No. PL20-3-000

(Issued April 21, 2022)

DANLY, Commissioner, *concurring*:

1. I concur with today's order<sup>1</sup> adopting the revisions that the Commission proposed in December 2020 to its *Policy Statement on Natural Gas and Electric Price Indices*.<sup>2</sup> As part of its charge to ensure just and reasonable rates,<sup>3</sup> the Commission should take actions that enhance the liquidity and transparency of the price indices that are used in jurisdictional tariffs.

2. I write separately to suggest that the Commission might have acted otherwise on its parallel proposal to codify its *Safe Harbor Policy for Data Providers to Price Index Developers* in Docket No. RM20-7-000 (Proposed Rule).<sup>4</sup> Doubtless, there are good reasons for the Commission to decline to act at this time.<sup>5</sup> However, the Commission offers none.

3. Initially, the Commission had found that "[b]ased on industry comments during and after the technical conference, we believe that incorporation of the Safe Harbor Policy into the Commission's regulations will provide greater certainty to market participants and will lead to increased voluntary reporting to price index developers."<sup>6</sup> All but one entity<sup>7</sup> commenting on the Proposed Rule agreed.<sup>8</sup> Though entitled to decline to take action, it would have been preferable for the Commission to have cited specific evidence and to have explained why it is now deterred from acting within our jurisdiction on a proposal that it had initially believed would improve the indices.

For these reasons, I respectfully concur.

James P. Danly,  
Commissioner.

[FR Doc. 2022-08972 Filed 4-27-22; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Docket No. AD21-15-000]

**Joint Federal-State Task Force on Electric Transmission; Notice of Meeting and Agenda**

As first announced in the Commission's March 22, 2022 Notice in the above-captioned docket,<sup>1</sup> the third public meeting of the Joint Federal-State Task Force on Electric Transmission (Task Force) will be held virtually on Friday, May 6, 2022, from approximately 10:00 a.m. to 4:00 p.m. Eastern time. Commissioners may attend and participate in this meeting. Attached to this Notice is an agenda for the meeting.

Discussions at the meeting may involve issues raised in proceedings that are currently pending before the Commission. These proceedings include, but are not limited to:

PPL Electric Utilities Corporation .....	Docket No. ER22-1606-000.
Southwest Power Pool, Inc.; Midcontinent Independent System Operator, Inc. ....	Docket No. ER22-1533-000; ER22-1535-000.
El Paso Electric Company .....	Docket No. ER22-1495-000.
NSTAR Electric Company .....	Docket No. ER22-1247-000.
New York Independent System Operator, Inc.; Niagara Mohawk Power Corporation. ....	Docket Nos. ER22-1072-000; ER22-1073-000.
Midcontinent Independent System Operator, Inc .....	Docket No. ER22-995-000.
PJM Interconnection, LLC .....	Docket No. ER22-902-000.
PacifiCorp .....	Docket No. ER22-834-000.
Midcontinent Independent System Operator, Inc .....	Docket No. ER22-477-000; ER22-477-001.
Southwest Power Pool, Inc .....	Docket No. ER22-822-001.
Milligan 3 Wind, LLC .....	Docket No. ER22-667-001.
Broad River Energy, LLC .....	Docket No. ER22-312-000.
Salt Creek Solar LLC v. Southwest Power Pool, Inc .....	Docket No. EL22-11-000.
Salt Creek Solar, LLC .....	Docket No. ER21-2878-000.
Midcontinent Independent System Operator, Inc .....	Docket No. ER21-2793-000; ER21-2793-001.
PJM Interconnection, LLC .....	Docket No. ER21-2282-000.
New York Independent System Operator, Inc .....	Docket No. ER21-1647-002.
Kendall County Solar Project, LLC v. PJM Interconnection, LLC .....	Docket No. EL21-95-000.
ISO New England, Inc .....	Docket No. EL21-94-000.
SOO Green HVDC Link ProjectCo, LLC v. PJM Interconnection, LLC ...	Docket No. EL21-85-000; EL21-103-000.
Tenaska Clear Creek Wind v. Southwest Power Pool, Inc .....	Docket No. EL21-77-000; EL21-77-001.
Central Hudson Gas & Electric Corporation v. New York Independent System Operator, Inc. ....	Docket No. EL21-66-001.
Neptune Regional Transmission System, LLC and Long Island Power Authority v. PJM Interconnection, LLC. ....	Docket No. EL21-39-000.
NECEC Transmission LLC v. NextEra Energy Resources, LLC .....	Docket No. EL21-6-000.

<sup>1</sup> *Actions Regarding the Commission's Policy on Price Index Formation & Transparency, & Indices Referenced in Nat. Gas & Elec. Tariffs*, 179 FERC ¶ 61,036 (2022) (Order).

<sup>2</sup> *Actions Regarding the Commission's Policy on Price Index Formation & Transparency, & Indices Referenced in Nat. Gas and Elec. Tariffs*, 173 FERC ¶ 61,237 (2020).

<sup>3</sup> See 15 U.S.C. 717c(a); *id.* § 717t-2; see also *NAACP v. FPC*, 425 U.S. 662, 669 (1976) ("[I]t is clear that the principal purpose of [the Natural Gas Act] was to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.") (citations omitted).

<sup>4</sup> 173 FERC ¶ 61,238 (2020).

<sup>5</sup> See Order, 179 FERC ¶ 61,036 at P 106.

<sup>6</sup> *Safe Harbor Policy for Data Providers to Price Index Developers*, 173 FERC ¶ 61,238 at P 12 (citations omitted).

<sup>7</sup> See Public Citizen, Inc., Comments, Docket No. RM20-7-000 (filed June 1, 2021).

<sup>8</sup> See, e.g., Argus Media, Inc., Comments, Docket No. RM20-7-000, at 3 (filed June 1, 2021) ("Market participants consistently have voiced concerns to Argus that federal authorities including the Commission may pursue enforcement actions because of inadvertent errors in reporting transactions to price index developers despite the existence of the Safe Harbor Policy. Inadvertent errors could still lead to costly and disruptive enforcement investigations and audits. This is made even more risky for the data provider as there are not any 'damage caps' for investigative costs or

potential liability."); Energy Intelligence, Comments, Docket No. PL20-3-000, at 2 (filed Mar. 23, 2021) ("Energy Intelligence views the Commission's parallel proposal (in Docket No. RM20-7-000) to codify into its regulations the 'Safe Harbor Policy for Data Providers' . . . as an essential component of the effort to encourage more market participants to report their transactions to price index developers. On numerous occasions, potential data providers have expressed a reluctance to report transactions due to perceived risks associated with inadvertently reporting something in error.").

<sup>1</sup> *Joint Fed.-State Task Force on Elec. Transmission*, Notice, Docket No. AD21-15-000 (issued Mar. 22, 2022).

NextEra Energy Seabrook, LLC .....	Docket No. EL21-3-000.
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The meeting will be open to the public for listening and observing and on the record. There is no fee for attendance and registration is not required. This conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, 202-347-3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-8659 (TTY), or send a fax to 202-208-2106 with the required accommodations.

More information about the Task Force, including frequently asked questions, is available here: <https://www.ferc.gov/TFSOET>. For more information about this meeting, please contact: Gretchen Kershaw, 202-502-8213, [gretchen.kershaw@ferc.gov](mailto:gretchen.kershaw@ferc.gov); or Jennifer Murphy, 202-898-1350, [jmurphy@naruc.org](mailto:jmurphy@naruc.org). For information related to logistics, please contact Benjamin Williams, 202-502-8506, [benjamin.williams@ferc.gov](mailto:benjamin.williams@ferc.gov); or Rob Thormeyer, 202-502-8694, [robert.thormeyer@ferc.gov](mailto:robert.thormeyer@ferc.gov).

For more information about this Notice, please contact: Gretchen Kershaw (Legal Information), Office of the General Counsel, (202) 502-8213, [Gretchen.Kershaw@ferc.gov](mailto:Gretchen.Kershaw@ferc.gov).

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2022-09122 Filed 4-27-22; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP19-73-003]

#### El Paso Natural Gas Company, L.L.C.; Notice of Initiation of Section 5 Proceeding

On April 21, 2022, the Commission issued an order in Docket No. RP19-73-003, pursuant to section 5 of the Natural Gas Act, 15 U.S.C. 717d, instituting an investigation into whether the rates currently charged by El Paso Natural Gas Company, L.L.C. are just and reasonable and setting the matter for hearing. *El Paso Natural Gas Company, L.L.C.*, 179 FERC ¶ 61,051 (2022).

Any interested person desiring to be heard in Docket No. RP19-73-003 must

file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 30 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2022-09124 Filed 4-27-22; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP22-166-000]

#### Tennessee Gas Pipeline Company, L.L.C.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on April 13, 2022, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in the above referenced docket a prior notice pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and its blanket certificate issued in Docket No. CP82-413-000 requesting authorization to install one new CAT 3616, gas driven, 5,000 horsepower reciprocating compressor package and associated piping, valves, and ancillary equipment at its existing Compressor Station 409 located in Hidalgo County, Texas (Compressor Station 409 Project). Tennessee states that the project will increase the north to south firm transportation capacity on Tennessee's system in Zone 0 by 69,500 dekatherms per day (Dth/d). Tennessee states that the change in capacity will enable Tennessee to extend the existing primary firm transportation path of Mex Gas Supply, S.L., a non-affiliated Tennessee shipper, to the Agua Dulce, Texas area. Also, the project will enable Tennessee to offer an additional 7,500 Dth/d of unsubscribed incremental firm capacity between the Agua Dulce, Texas area and the Mexico border. Tennessee estimates the cost of the Compressor Station 409 Project to be approximately \$23.2 million, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel

Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Any questions concerning this request should be directed to Debbie Kalisek, Senior Regulatory Analyst, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420-3292, or by email at [debbie\\_kalisek@kindermorgan.com](mailto:debbie_kalisek@kindermorgan.com).

### Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on June 21, 2022. How to file protests, motions to intervene, and comments is explained below.

#### Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,<sup>1</sup> any person<sup>2</sup> or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,<sup>3</sup> and must be submitted by the protest deadline, which is June 21, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

#### Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to

subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure<sup>4</sup> and the regulations under the NGA<sup>5</sup> by the intervention deadline for the project, which is June 21, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to/intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

#### Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before June 21, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

#### How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22-166-000 in your submission. The Commission encourages electronic filing of submissions.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing."

The Commission's eFiling staff are available to assist you at (202) 502-8258 or [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov).

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP22-166-000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: [debbie\\_kalisek@kindermorgan.com](mailto:debbie_kalisek@kindermorgan.com), 1001 Louisiana Street, Suite 1000, Houston, Texas, 77002. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

#### Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at [www.ferc.gov](http://www.ferc.gov) using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

<sup>1</sup> 18 CFR 157.205.

<sup>2</sup> Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

<sup>3</sup> 18 CFR 157.205(e).

<sup>4</sup> 18 CFR 385.214.

<sup>5</sup> 18 CFR 157.10.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09118 Filed 4–27–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

#### Filings in Existing Proceedings

*Docket Numbers:* RP22–803–001.

*Applicants:* ANR Pipeline Company.

*Description:* Tariff Amendment: Amendment to Freepoint Commodities 137467 to be effective 4/1/2022.

*Filed Date:* 4/21/22.

*Accession Number:* 20220421–5175.

*Comment Date:* 5 p.m. ET 5/3/22.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

#### Filings Instituting Proceedings

*Docket Numbers:* RP22–835–000.

*Applicants:* Rover Pipeline LLC.

*Description:* § 4(d) Rate Filing: Update to GT&C Section 21 to be effective 5/22/2022.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5073.

*Comment Date:* 5 p.m. ET 5/4/22.

*Docket Numbers:* RP22–836–000.

*Applicants:* Algonquin Gas Transmission, LLC.

*Description:* Compliance filing: AGT APR 2022 OFO Penalty Disbursement Report to be effective N/A.

*Filed Date:* 4/22/22.

*Accession Number:* 20220422–5076.

*Comment Date:* 5 p.m. ET 5/4/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09120 Filed 4–27–22; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL22–48–000]

#### Jackson Generation, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On April 22, 2022, the Commission issued an order in Docket No. EL22–48–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation into whether Jackson Generation, LLC's rate schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Jackson Generation, LLC*, 179 FERC ¶ 61,060 (2022).

The refund effective date in Docket No. EL22–48–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL22–48–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2021), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call

toll-free, (886) 208–3676 or TTY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFile" link at <http://www.ferc.gov>. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: April 22, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–09117 Filed 4–27–22; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0223; FRL–9723–01–OCSPP]

### Notice of Receipts of Requests to Voluntarily Cancel Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations. EPA intends to grant these requests at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the requests, or unless the registrants withdraw its requests. If these requests are granted, any sale, distribution, or use of products listed in this notice will be permitted after the registration has been cancelled only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before May 31, 2022.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0223, through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

Submit written withdrawal request by mail to: Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001. ATTN: Christopher Green.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

Christopher Green, Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 566-2707; email address: [green.christopher@epa.gov](mailto:green.christopher@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

#### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *Regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a

copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at <https://www.epa.gov/dockets/commenting-epa-dockets>.

### II. What action is the Agency taking?

This notice announces receipt by the Agency of requests from registrants to cancel certain pesticide products registered under FIFRA section 3 (7 U.S.C. 136a) or 24(c) (7 U.S.C. 136v(c)). These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 and Table 1A of this unit.

Unless the Agency determines that there are substantive comments that warrant further review of the requests or the registrants withdraw their requests, EPA intends to issue an order in the **Federal Register** canceling all of the affected registrations.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
239-2657 .....	239	Ortho Groundclear Total Vegetation Killer .....	Glyphosate-isopropylammonium & Imazapyr, isopropylamine salt.
239-2686 .....	239	Ground Clear RTU .....	Imazapyr, isopropylamine salt & Glyphosate-isopropylammonium.
279-3465 .....	279	F-9559 Insecticide .....	lambda-Cyhalothrin.
279-3538 .....	279	Nufos 4E .....	Chlorpyrifos.
279-3551 .....	279	Proaxis CHA .....	Gamma-Cyhalothrin.
279-3574 .....	279	Proaxis EX .....	Gamma-Cyhalothrin.
279-3578 .....	279	Fyfanon Plus ULV .....	Malathion (NO INERT USE) & gamma-Cyhalothrin.
279-3581 .....	279	Bolton Insecticide .....	Chlorpyrifos & gamma-Cyhalothrin.
279-3582 .....	279	Prolex .....	Gamma-Cyhalothrin.
279-3598 .....	279	Malathion 851 G/L + Gamma-Cyhalothrin 12.8 G/L EC.	Gamma-Cyhalothrin & Malathion (NO INERT USE).
279-9545 .....	279	F9047-2 EC Insecticide .....	Chlorpyrifos & Zeta-Cypermethrin.
279-9570 .....	279	Gat Lambda 25 CS .....	Lambda-Cyhalothrin.
279-9572 .....	279	Gat Chlorpyrifos Cs .....	Chlorpyrifos.
279-9574 .....	279	Chlorpyrifos 42 CS .....	Chlorpyrifos.
499-367 .....	499	Whitmire PT 275 Dur-O-Cap Microencapsulated Chlorpyrifos.	Chlorpyrifos.
499-405 .....	499	Whitmire PT 1920 Total Release Insecticide .....	Chlorpyrifos.
499-419 .....	499	Duration PT 275 MC Microencapsulated Dursban Liquid Concentrate.	Chlorpyrifos.
1381-210 .....	1381	Mystic Z Insecticide .....	Lambda-Cyhalothrin.
1381-211 .....	1381	Grizzly Z Insecticide .....	Lambda-Cyhalothrin.
1381-257 .....	1381	Grizzly Too .....	Lambda-Cyhalothrin.
6836-276 .....	6836	Lonza Dc-101 RTU .....	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride; 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride.
7969-144 .....	7969	Frontier Herbicide .....	Dimethenamid.
7969-147 .....	7969	Frontier 6.0 Herbicide .....	Dimethenamid.
9688-124 .....	9688	Fungicide M1 .....	Myclobutanil.
9688-157 .....	9688	Chemsico Aerosol M .....	Myclobutanil.
9688-158 .....	9688	Chemsico RTU M .....	Myclobutanil.
9688-160 .....	9688	Chemsico Fungicide Concentrate M6 .....	Myclobutanil.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Company No.	Product name	Active ingredients
9688–165 .....	9688	Chemsico Fungicide Concentrate 3000 .....	Myclobutanil.
9688–219 .....	9688	Chemsico Lawn Granules 4LF .....	Lambda-Cyhalothrin.
9688–220 .....	9688	Chemsico Lawn Granules 3LF .....	Lambda-Cyhalothrin.
34704–917 .....	34704	Isoxaben 75DF Specialty Herbicide .....	Isoxaben.
34704–968 .....	34704	LPI Iprodione Fungicide .....	Iprodione.
53883–70 .....	53883	Martin's Insectitabs .....	Lambda-Cyhalothrin.
53883–260 .....	53883	CSI Lambda 25 CS .....	Lambda-Cyhalothrin.
53883–261 .....	53883	CSI Lambda 9.7 CS .....	Lambda-Cyhalothrin.
53883–264 .....	53883	CSI Chlorpyrifos CS .....	Chlorpyrifos.
53883–292 .....	53883	CSI Lambda-Cyhalothrin Technical .....	Lambda-Cyhalothrin.
53883–331 .....	53883	CSI Chlorpyrifos 42 CS Insecticide .....	Chlorpyrifos.
53883–355 .....	53883	CSI Chlorpyrifos 20 CS .....	Chlorpyrifos.
83222–23 .....	83222	Lambda 25 CS .....	Lambda-Cyhalothrin.
83402–1 .....	83402	Zestat A-100 .....	Cetyl pyridinium chloride.
83402–2 .....	83402	Zestat Preservative .....	Cetyl pyridinium chloride.
86363–11 .....	86363	Bifenchlor .....	Bifenthrin & Chlorpyrifos.
87373–41 .....	87373	A364.02 .....	Paraquat dichloride.
87373–112 .....	87373	Paraquat Technical .....	Paraquat dichloride.
89168–20 .....	89168	Liberty Chlorpyrifos Bifenthrin .....	Bifenthrin & Chlorpyrifos.
89168–24 .....	89168	Liberty Chlorpyrifos 4E .....	Chlorpyrifos.
89168–47 .....	89168	Liberty Granular Insecticide .....	Bifenthrin & Chlorpyrifos.
89459–69 .....	89459	Equil Pyrifos .....	Chlorpyrifos.
91234–87 .....	91234	A364.01 .....	Paraquat dichloride.
92061–1 .....	92061	United Disinfectant Wipes .....	Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride; 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride.
AZ–190001 .....	62719	Enlist Duo .....	2,4-D, Choline salt & Glycine, N-(phosphonomethyl)-, compd. with N-methylmethanamine (1:1).
AZ–200001 .....	62719	GF–3335 .....	2,4-D, Choline salt.
CA–050012 .....	264	Buctril 4EC Herbicide .....	Bromoxynil octanoate & Bromoxynil heptanoate.
ID–000009 .....	5481	Amvac AZA 3% EC .....	Azadirachtin.
MT–060001 .....	400	Dimilin 2L .....	Diflubenzuron.
MT–090004 .....	70506	Bifenture EC Agricultural Insecticide .....	Bifenthrin.
MT–180001 .....	66222	ADA 11280 Insecticide .....	Acetamiprid & Novaluron.
NC–050004 .....	95290	Curfew .....	Telone.
ND–090001 .....	70506	Super Tin 4L Fungicide .....	Fentin hydroxide.
NY–080010 .....	70506	Kraken .....	Triclopyr, triethylamine salt.
OR–110007 .....	62719	Entrust .....	Spinosad.
OR–160013 .....	62719	Entrust SC .....	Spinosad.
TX–120010 .....	100	Gramoxone SL 2.0 .....	Paraquat dichloride.
UT–180010 .....	5481	Parazone 3SL Herbicide .....	Paraquat dichloride.
WA–010004 .....	5481	K-Salt Fruit Fix 200 .....	Potassium 1-naphthaleneacetate.
WA–100005 .....	62719	Stinger .....	Clopyralid, monoethanolamine salt.
WA–160005 .....	279	Dupont Coragen Insect Control .....	Chlorantraniliprole.
WA–960002 .....	100	Beacon Herbicide .....	Primisulfuron-methyl.

TABLE 1A—PRODUCT REGISTRATION WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
MT–120005 .....	62719	Entrust .....	Spinosad.

The registration listed in Table 1A of Unit II, requests the effective date of cancellation to be, March 3, 2022.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 and Table 1A of this unit, in sequence

by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company name and address
100 .....	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
239 .....	The Scotts Company, d/b/a, The Ortho Group, P.O. Box 190, Marysville, OH 43040.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION—Continued

EPA Company No.	Company name and address
264 .....	Bayer CropScience, LP, Agent Name: Bayer CropScience, LLC, 801 Pennsylvania Avenue, Suite 900, Washington, DC 20004.
279 .....	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
400 .....	MacDermid Agricultural Solutions, Inc., Agent Name: UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
499 .....	BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
1381 .....	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
5481 .....	Amvac Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660–1706.
6836 .....	Arxada, LLC, 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
7969 .....	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
9688 .....	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
34704 .....	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
53883 .....	Control Solutions, Inc., 5903 Genoa Red Bluff Road, Pasadena, TX 77507.
62719 .....	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
66222 .....	Makhteshim Agan of North America, Inc., d/b/a, Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
70506 .....	UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
83222 .....	Winfield Solutions, LLC, 1080 County Rd., F West, MS5705, P.O. Box 64589, St. Paul, MN 55164.
83402 .....	Vertellus, LLC, Agent Name: The Acta Group, L.L.C., 201 N. Illinois St., Suite 1800, Indianapolis, IN 46204.
86363 .....	Kaizen Agent Name: Lighthouse Product, Services Technologies, LLC, 2411 S Bear Claw Way, Meridian, ID 83642.
87373 .....	Argite, LLC, Agent Name: Wagner Regulatory Associates, P.O. Box 640, Hockessin, DE 19707–0640.
89168 .....	Liberty Crop Protection, LLC, 1880 Fall River Dr., #100, Loveland, CO 80538.
89459 .....	Central Garden & Pet Company, 1501 East Woodfield Road, Suite 200W, Schaumburg, IL 60173.
91234 .....	Atticus, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct, NW, Gig Harbor, WA 98332–9122.
92061 .....	VRC Technologies, Inc., Agent Name: Mandava Chemical Consulting, 68602 N. Dallas Parkway, Suite 200, Plano, TX 75024.
95290 .....	Salt Lake Holding, LLC, 2211 H.H. Dow Way, Midland, MI 48674.

### III. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or
2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The registrants in Table 2 of Unit II have requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 30-day comment period on the proposed requests.

### IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation should submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

### V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

#### *For MT–120005*

The registrant has requested the effective date of cancellation to be, March 3, 2022, for MT–120005; therefore, because the Agency has identified no significant potential risk concerns associated with the pesticide product, upon cancellation of the product identified in Table 1A of Unit II, EPA anticipates allowing the registrant to sell and distribute existing stocks of the product identified in Table 1A of Unit II, until March 3, 2023. Thereafter, the registrant will be prohibited from selling or distributing the pesticide identified in Table 1A of Unit II, except for export consistent with

FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

For all other voluntary cancellations listed in Table 1 of Unit II, because the Agency has identified no significant potential risk concerns associated with these pesticide products, upon cancellation of the products identified in Table 1 of Unit II, EPA anticipates allowing registrants to sell and distribute existing stocks of these products for 1 year after publication of the Cancellation Order in the **Federal Register**. Thereafter, registrants will be prohibited from selling or distributing the pesticides identified in Table 1 of Unit II, except for export consistent with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Persons other than registrants will generally be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: April 25, 2022.

**Marietta Echeverria**,  
Acting Director, Registration Division, Office  
of Pesticide Programs.

[FR Doc. 2022–09131 Filed 4–27–22; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R06-OW-2022-0371; FRL-9257-01-R6]

### Proposed Issuance of the NPDES General Permit for Discharges From Hydrostatic Testing of New and Existing Vessels in New Mexico (NMG270000), Oklahoma (OKG27F000), and Indian Country Within the States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed NPDES General Permit Issuance.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 Water Division, is proposing for public comment the issuance of a National Pollutant Discharge Elimination System (NPDES) general permit authorizing discharges resulting from the hydrostatic testing of new and existing vessels (e.g., pipelines, storage tanks, etc.) in New Mexico (NMG270000) and Oklahoma (OKG27F000). This authorization also covers Indian Country within the States of Texas, Oklahoma, New Mexico, and Louisiana (TXG27I000, OKG27I000, NMG27I000, & LAG27I000).

To determine whether your facility, company, business, organization, etc., may be affected by this action, you should carefully examine the applicability criteria in Part I, Section A.3 of the draft permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**DATES:** Comments must be submitted in writing to EPA on or before June 27, 2022.

**Proposed Documents:** A copy of the proposed permit and the fact sheet which sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the proposed general permit may be obtained via the internet at: <https://www.epa.gov/publicnotices>. To obtain hard copies of these documents or any other information in the administrative record, please contact Ms. Evelyn Rosborough using the contact information provided below.

### Other Legal Requirements

#### A. State/Tribal Certification

Under section 401(a)(1) of the CWA, EPA may not issue an NPDES permit until the State or Tribe in which the

discharge will occur grants or waives certification to ensure compliance with appropriate requirements of the CWA and State/Tribal law. EPA will seek certification from the New Mexico Environment Department, Oklahoma Department of Environmental Quality, and the respective Tribe within the States of Texas, Oklahoma, New Mexico and Louisiana prior to issuing a final permit. EPA is the certifying authority and certifies the permit for areas where neither a state nor tribe has CWA 401(a)(1) certification authority.

#### B. Other Regulatory Requirements

This is a first-time permit issuance. EPA had conducted evaluations required by Coastal Zone Management Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Historic Preservation Act, Paperwork Reduction Act, and Regulatory Flexibility Act. These requirements are discussed in the fact sheet.

How do I comment on this proposal?

**Comment Submittals:** You may send comments, identified by Docket ID. No. EPA-R06-OW-2022-0371 by any of the following methods:

- **Federal eRulemaking Portal:** <https://www.regulations.gov/> (our preferred method).
- **By Email:** Send comments by email to [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov). Include Docket ID. No EPA-R06-OW-2022-0371 in the subject line of the email.
- **By Mail/Hand Delivery/Courier:** Deliver comments to U.S. EPA, Attn: Evelyn Rosborough, 1201 Elm Street, Dallas, Texas 75270.
- We encourage the public to submit comments via [www.Regulations.gov](http://www.Regulations.gov) or via email as there may be a delay in processing mail and hand deliveries will be accepted by appointment only due to public health concerns related to COVID-19.

• Please submit your comments within the specified time period cited in the **DATES** section of this document. Comments received after the close of the comment period will be marked "late". The EPA is not required to consider these late comments. All comments received by the EPA in accordance with this section by the ending date of the comment period will be considered by the EPA before a final decision is made regarding permit issuance.

• Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket.

Do not submit to EPA's docket or email any information you consider to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**For Technical Information Contact:** Maria Okpala, NPDES Permitting Section (6WD-PE), U.S. Environmental Protection Agency, 1201 Elm Street, Suite 500, Dallas, TX 75270; Telephone: (214) 665-3152; email address: [okpala.maria@epa.gov](mailto:okpala.maria@epa.gov).

**Administrative record:** All documents and references used in the development of this permit are part of the Administrative Record for this permit. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available materials are available either electronically or in hard copy from Ms. Evelyn Rosborough at the address above. The Administrative Record may also be viewed at the EPA Region 6 Offices from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. For more information on scheduling a time to view the Record or to obtain copies of available documents, please contact Ms. Evelyn Rosborough at 214-665-7515 or [rosborough.evelyn@epa.gov](mailto:rosborough.evelyn@epa.gov).

#### Public Hearings

All persons have the right to provide written comments during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed permit. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in a public hearing on

the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

*Authority:* Clean Water Act, 33 U.S.C. 1251 *et seq.*

**Charles W. Maguire,**

*Director, Water Division, EPA Region 6.*

[FR Doc. 2022-09017 Filed 4-27-22; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0750; FRL-9741-01-OCSPP]

### Pesticide Registration Review; Proposed Interim Decisions for Several Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's proposed interim registration review decisions and opens a 60-day public comment period on the proposed interim decisions for the following pesticides: Captan, copper 8-quinolinolate; dazomet; diuron; fluometuron; folpet; garlic oil; *pasteuria* species; pelargonic acid, salts, and esters, fatty acid monoesters, capric acid, and caprylic acid; porcine zona pellucida (PZP); propiconazole; *pseudomonas syringae*; and trimethylamine and trimethylamine hydrochloride.

**DATES:** Comments must be received on or before June 27, 2022.

**ADDRESSES:** Submit your comments, identified by the docket identification (ID) number for the specific pesticide of interest provided in Table 1 in Unit IV. of this document, using the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets/about-epa-dockets>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointments. For

the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-Evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; email address: [biscoe.melanie@epa.gov](mailto:biscoe.melanie@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

#### B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through [regulations.gov](https://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at: <https://www.epa.gov/dockets/commenting-epa-dockets>.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement

of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

## II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed proposed interim decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

## III. Authority

EPA is conducting its registration review of the chemicals listed in the Table 1 in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

## IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed interim registration review decisions for the pesticides shown in Table 1 and opens a 60-day public

comment period on the proposed interim registration review decisions.

TABLE 1—PROPOSED INTERIM DECISIONS

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Captan Case Number 0120 .....	EPA-HQ-OPP-2013-0296 .....	Christina Scheltema, <a href="mailto:scheltema.christina@epa.gov">scheltema.christina@epa.gov</a> , (202) 566-2272.
Copper 8-Quinolinate Case Number 5118.	EPA-HQ-OPP-2010-0454 .....	Peter Bergquist, <a href="mailto:bergquist.peter@epa.gov">bergquist.peter@epa.gov</a> , (202) 566-0648.
Dazomet Case Number 2135 .....	EPA-HQ-OPP-2013-0080 .....	Rachel Eberius, <a href="mailto:eberius.rachel@epa.gov">eberius.rachel@epa.gov</a> , (202) 566-2223. Stephen Savage, <a href="mailto:savage.stephen@epa.gov">savage.stephen@epa.gov</a> , (202) 566-0616.
Diuron Case Number 0046 .....	EPA-HQ-OPP-2015-0077 .....	Theodore Varns, <a href="mailto:varns.theodore@epa.gov">varns.theodore@epa.gov</a> , (202) 566-2241. SanYvette Williams, <a href="mailto:williams.sanyvette@epa.gov">williams.sanyvette@epa.gov</a> , (202) 566-0912.
Fluometuron Case Number 0049 .....	EPA-HQ-OPP-2015-0746 .....	Carolyn Smith, <a href="mailto:smith.carolyn@epa.gov">smith.carolyn@epa.gov</a> , (202) 566-2273.
Folpet Case Number 0630 .....	EPA-HQ-OPP-2012-0859 .....	Ben Tweed, <a href="mailto:tweed.benjamin@epa.gov">tweed.benjamin@epa.gov</a> , (202) 566-2274. Erin Dandridge, <a href="mailto:dandridge.erin@epa.gov">dandridge.erin@epa.gov</a> , (202) 566-0635.
Garlic Oil Case Number 4007 .....	EPA-HQ-OPP-2021-0838 .....	Joseph Mabon, <a href="mailto:mabon.joseph@epa.gov">mabon.joseph@epa.gov</a> , (202) 566-1535.
<i>Pasteuria</i> species Case Numbers 6526, 6527, and 6535.	EPA-HQ-OPP-2021-0614 .....	Andrew Queen, <a href="mailto:queen.andrew@epa.gov">queen.andrew@epa.gov</a> , (202) 566-1539.
Pelargonic Acid, Salts, and Esters, Fatty Acid Monoesters, Capric Acid, and Caprylic Acid (combined Preliminary Work Plan and Proposed Interim Decision) Case Numbers 6077, 6016, 5038, and 5028.	EPA-HQ-OPP-2021-0336 .....	Kendall Ziner, <a href="mailto:ziner.kendall@epa.gov">ziner.kendall@epa.gov</a> , (202) 566-0621.
Porcine zona pellucida (PZP) (combined work plan and PID) Case Number 7801-2.	EPA-HQ-OPP-2022-0153 .....	Ben Tweed, <a href="mailto:tweed.benjamin@epa.gov">tweed.benjamin@epa.gov</a> , (202) 566-2274.
Propiconazole Case Number 3125 .....	EPA-HQ-OPP-2015-0459 .....	Anna Romanovsky, <a href="mailto:romanovsky.anna@epa.gov">romanovsky.anna@epa.gov</a> , (202) 566-2271. Kendall Ziner, <a href="mailto:ziner.kendall@epa.gov">ziner.kendall@epa.gov</a> , (202) 566-0621.
<i>Pseudomonas syringae</i> Case Number 6007.	EPA-HQ-OPP-2022-0088 .....	Bibiana Oe, <a href="mailto:oe.bibiana@epa.gov">oe.bibiana@epa.gov</a> , (202) 566-1538.
Trimethylamine and Trimethylamine Hydrochloride Case Number 6304.	EPA-HQ-OPP-2021-0852 .....	Monica Thapa, <a href="mailto:thapa.monica@epa.gov">thapa.monica@epa.gov</a> , (202) 566-1543.

The registration review docket for a pesticide includes earlier documents related to the registration review case. For example, the review opened with a Preliminary Work Plan, for public comment. A Final Work Plan was placed in the docket following public comment on the Preliminary Work Plan.

The documents in the dockets describe EPA's rationales for conducting additional risk assessments for the registration review of the pesticides included in Table 1 in Unit IV, as well as the Agency's subsequent risk findings and consideration of possible risk mitigation measures. These proposed interim registration review decisions are supported by the rationales included in those documents. Following public comment, the Agency will issue interim or final registration review decisions for the pesticides listed in Table 1 in Unit IV.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed interim registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for

initiating any necessary amendments to the proposed interim decision. All comments should be submitted using the methods in **ADDRESSES** and must be received by EPA on or before the closing date. These comments will become part of the docket for the pesticides included in Table 1 in Unit IV. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and may provide a "Response to Comments Memorandum" in the docket. The interim registration review decision will explain the effect that any comments had on the interim decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: <https://www.epa.gov/pesticide-reevaluation>.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 22, 2022.

**Mary Reaves,**

Director, Pesticide Re-Evaluation Division,  
Office of Pesticide Programs.

[FR Doc. 2022-09135 Filed 4-27-22; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-HQ-OPP-2011-0374; FRL-9758-01-OCSPP]**

### Notice of Intent To Suspend Dimethyl Tetrachloroterephthalate (DCPA) Technical Registration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice, pursuant the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), publishes a Notice of Intent to Suspend a pesticide registration issued by EPA containing dimethyl tetrachloroterephthalate (DCPA). The Notice of Intent to Suspend was issued following the Agency's January 21, 2013, issuance of a Data

Call-In Notice (DCI), which required the registrant of the affected pesticide product containing DCPA to take appropriate steps to secure certain data. Following the registrant's failure to submit these data or to take other appropriate steps to secure the required data, the agency is unable to fully evaluate the risks associated with DCPA. Data for DCPA were determined to be required to maintain the existing registration of the affected product. In particular, due to the lack of complete data examining thyroid toxicity of DCPA, the Agency is not able to complete a scientifically robust and defensible human health risk assessment. Preliminary data evaluated by EPA provides evidence that, in animal studies, the fetus is potentially more sensitive to DCPA's effect on thyroid function compared to the mother. Given this potential fetal sensitivity, EPA has concerns for exposures to pregnant females and effects on the developing fetus. Based on EPA's review of the preliminary data, applying a standard uncertainty factor (typically a ten-fold factor) to account for these missing data may not be adequate to account for these effects. The failure of the registrant to comply with the thyroid toxicity and other data requirements of the DCPA DCI is a basis for suspension of the affected registration under FIFRA.

**DATES:** The Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the Notice of Intent to Suspend or, if the EPA Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so, the Notice of Intent to Suspend becomes

effective 30 days after the date of publication of this notice in the **Federal Register**, unless, during that time, a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend, or the registrant has satisfied the EPA Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV explains what must be done to avoid suspension under this notice (*i.e.*, how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

**FOR FURTHER INFORMATION CONTACT:** James Douglass, Pesticide Re-evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (202) 566-2343; email address: [douglass.james@epa.gov](mailto:douglass.james@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number

EPA-HQ-OPP-2011-0374, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. Due to public health concerns related to COVID-19, the EPA/DC and Reading Room are open to the public by appointment only, and walk-ins are not allowed. Visitors to the Reading Room must complete docket material requests in advance and then make an appointment to retrieve the material. Please contact the EPA Reading Room staff at (202) 566-1744 or via the Dockets Customer Service email at [docket-customerservice@epa.gov](mailto:docket-customerservice@epa.gov) to arrange material requests and appointments. Please review the visitor instructions and additional information available at <https://www.epa.gov/dockets/epa-docket-center-and-reading-room-open-public-appointment-only>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**II. Registrant Issued Notice of Intent To Suspend Active Ingredient, Product Affected, and Date Issued**

The registrant and product subject to this Notice of Intent to Suspend are listed in Table 1. A Notice of Intent to Suspend was sent to the registrant of the affected product.

TABLE 1—LIST OF REGISTRANT AND PRODUCT SUBJECT TO SUSPENSION

Registrant affected	Active ingredient	EPA registration number	Product name	Date EPA issued notice of intent to suspend
AMVAC Chemical Corporation.	DCPA (or chlorthal-dimethyl) .....	5481-495	TECHNICAL CHLORTHAL DI-METHYL.	April 28, 2022.

**III. Basis for Issuance of Notice of Intent To Suspend; Requirement List**

The registrant failed to submit the data or information required by the

Data-Call-In Notice (GDCI-078701-1140, available at <https://www.regulations.gov/document/EPA-HQ-OPP-2011-0374-0009>), or to take

other appropriate steps to secure the required data for their pesticide product listed in Table 2 of this unit.

TABLE 2—LIST OF REQUIREMENTS

EPA registration No.	Guideline number as listed in applicable DCI	Requirement name	Date EPA issued DCI	Date registrant received DCI	Final data due date	Reason for notice of intent to suspend
5481–495 .....	835.4200 .....	Anaerobic soil metabolism (TPA).	January 31, 2013.	January 31, 2013.	January 31, 2015.	Inadequate data received.
5481–495 .....	835.4300 .....	Aerobic aquatic metabolism (TPA).	January 31, 2013.	January 31, 2013.	January 31, 2015.	Inadequate 90-day response received. No data received.
5481–495 .....	835.4400 .....	Anaerobic aquatic metabolism (TPA).	January 31, 2013.	January 31, 2013.	January 31, 2015.	Inadequate 90-day response received. No data received.
5481–495 .....	850.1350 .....	Chronic toxicity mysid (DCPA)	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate data received.
5481–495 .....	850.1350 .....	Chronic toxicity mysid (TPA)	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate 90-day response received. No data received.
5481–495 .....	850.1400 .....	Fish early life-stage (bluegill sunfish) (DCPA).	January 31, 2013.	January 31, 2013.	January 31, 2014.	No data received.
5481–495 .....	850.1400 .....	Fish early life-stage (sheeps-head minnow) (DCPA).	January 31, 2013.	January 31, 2013.	January 31, 2014.	No data received.
5481–495 .....	850.1400 .....	Fish early life-stage (rainbow trout) (TPA).	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate 90-day response received. No data received.
5481–495 .....	850.1400 .....	Fish early life-stage (bluegill sunfish) (TPA).	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate 90-day response received. No data received.
5481–495 .....	850.1400 .....	Fish early life-stage (sheeps-head minnow) (TPA).	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate 90-day response received. No data received.
5481–495 .....	850.2100 .....	Acute avian oral toxicity (passerine species) (DCPA).	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate data received.
5481–495 .....	850.4100 .....	Seedling Emergence (DCPA) [lettuce only].	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate data received.
5481–495 .....	850.4500 (formerly 850.5400).	Algal toxicity test, Tier I/II (TPA) [marine diatom only].	January 31, 2013.	January 31, 2013.	January 31, 2014.	Inadequate 90-day response received. No data received.
5481–495 .....	860.1300 .....	Nature of the residue: poultry	January 31, 2013.	January 31, 2013.	January 31, 2015.	Inadequate 90-day response received. No data received.
5481–495 .....	860.1340 .....	Residue analytical method: livestock commodities.	January 31, 2013.	January 31, 2013.	January 31, 2015.	Inadequate 90-day response received. No data received.
5481–495 .....	860.1480 .....	Meat/milk/poultry/eggs .....	January 31, 2013.	January 31, 2013.	January 31, 2015.	Inadequate 90-day response received. No data received.
5481–495 .....	860.1900 .....	Field accumulation in rotational crops.	January 31, 2013.	January 31, 2013.	January 31, 2016.	Inadequate 90-day response received; inadequate data received.
5481–495 .....	Non-guideline	Chronic Sediment toxicity— <i>Chironomus</i> (DCPA).	January 31, 2013.	January 31, 2013.	January 31, 2015.	Inadequate data received.
5481–495 .....	Non-guideline	Chronic Sediment toxicity— <i>Leptocheirus</i> (DCPA).	January 31, 2013.	January 31, 2013.	January 31, 2015.	No data received.
5481–495 .....	Non-guideline	Comparative thyroid study (DCPA).	January 31, 2013.	January 31, 2013.	January 31, 2015.	No data received.

#### IV. How To Avoid Suspension Under this Notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend or, if you did not receive the notice that was sent to you, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of FIFRA section 6(d) (7 U.S.C. 136d) and the Agency's procedural regulations in 40 CFR part 164, to the extent applicable. Section 3(c)(2)(B) of FIFRA (7 U.S.C. 136a), however, provides that the only allowable issues which may be

addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no

bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held, and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.

- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Instructions for filing a request for a hearing are available at [www.epa.gov/alj](http://www.epa.gov/alj). You may file your request for a hearing electronically by clicking on the link to “E-file using the electronic filing system,” or choose an alternative filing option by clicking on the link to “File by courier, mail or personal delivery.” If you intend to use the electronic filing system, EPA advises that you register in advance because there may be a 1–2 business day delay between when you register and when you will be able to upload documents into the system.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration by operation of law and, under such circumstances, the suspension of the registration for your affected product will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency’s rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the EPA Administrator, the EPA Deputy Administrator, and the members of the staff in the immediate offices of

the EPA Administrator and EPA Deputy Administrator. In addition, the Administrator may designate specific individuals in the immediate office of the Administrator and the Office of General Counsel as judicial staff for particular hearings. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30-day deadline period as measured from your receipt of the Notice of Intent to Suspend or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) DCI notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2—List of Requirements in Unit III., for the product by submitting all required supporting data/information described in Table 2 of Unit. III. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) through CDX via the DCI application of the Pesticide Submission Portal (PSP). If you have a CDX account with access to the PSP, you may follow the link below to sign in, acknowledge receipt, and access your DCI(s): <https://cdx.epa.gov/>.

A user guide is available for instructions on what to do if you do not have a CDX account or if you need to add PSP to your account: [https://cdx.epa.gov/content/documents/PSP/OPP\\_CDX\\_Pesticide\\_Submission\\_PortalRegistration\\_UserGuidev1.0p.pdf](https://cdx.epa.gov/content/documents/PSP/OPP_CDX_Pesticide_Submission_PortalRegistration_UserGuidev1.0p.pdf).

For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product. The suspension of the registration of your company’s product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit III.

## V. Status of Products That Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of product listed in Table 1 of Unit II., may not legally distribute, sell, use (including use to formulate another pesticide product), offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II, except for the purpose of disposal in accordance with all applicable federal, state and local requirements. Any distribution or sale by the registrant subject to this notice, of a pesticide whose registration is suspended, is an unlawful act under section 12(a)(1)(A) of the FIFRA. Any other violation of the suspension order, including use to formulate another pesticide product, is an unlawful act under section 12(a)(2)(f) of FIFRA. Persons other than the registrant subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) DCI notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: April 21, 2022.

**Mary Elissa Reaves,**

Director, Pesticide Re-Evaluation Division,  
Office of Pesticide Programs.

[FR Doc. 2022-09069 Filed 4-27-22; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2017-0751; FRL-9742-01-OCSPP]

### Pesticide Registration Review; Decisions and Case Closures for Several Pesticides; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's interim or final registration review decision for the following chemicals: Chlormequat chloride, cycloate, difenoconazole, famoxadone, kaolin, napropamide, oxadiazon, and pyridalyl. In addition, it announces an amended interim decision for clopyralid and permethrin.

**ADDRESSES:** To access the dockets for these chemicals use the Federal eRulemaking Portal at <https://www.regulations.gov>, and the docket identification (ID) number for the specific pesticide of interest as provided in Table 1 in Unit IV. of this document. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets/about-epa-dockets>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointments. For

the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: email address: [biscoe.melanie@epa.gov](mailto:biscoe.melanie@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the Chemical Review Manager for the pesticide of interest identified in Table 1 in Unit IV.

##### II. Background

Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human

health or the environment. As part of the registration review process, the Agency has completed interim or final decisions for all pesticides listed in Table 1 in Unit IV. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

##### III. Authority

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

##### IV. What action is the Agency taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's interim or final registration review decisions for the pesticides shown in Table 1. The registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE 1—REGISTRATION REVIEW INTERIM AND FINAL DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Chlormequat Chloride <sup>b</sup> Case Number 7069 .....	EPA-HQ-OPP-2015-0816	Rachel Stephenson, <a href="mailto:stephenson.rachel@epa.gov">stephenson.rachel@epa.gov</a> , (202) 566-2363.
Clopyralid Case Number 7212 .....	EPA-HQ-OPP-2014-0167	Andy Muench, <a href="mailto:muench.andrew@epa.gov">muench.andrew@epa.gov</a> , (202) 566-2355.
Cycloate Case Number 2125 .....	EPA-HQ-OPP-2015-0288	Kelsi Grogan, <a href="mailto:grogan.kelsi@epa.gov">grogan.kelsi@epa.gov</a> , (202) 566-2228.
Difenoconazole Case Number 7014 .....	EPA-HQ-OPP-2015-0401	Lauren Weissenborn, <a href="mailto:weissenborn.lauren@epa.gov">weissenborn.lauren@epa.gov</a> , (202) 566-2374.
Famoxadone Case Number 7038 .....	EPA-HQ-OPP-2015-0094	Christian Bongard, <a href="mailto:bongard.christian@epa.gov">bongard.christian@epa.gov</a> , (202) 566-2248.
Kaolin Case Number 6039 .....	EPA-HQ-OPP-2014-0107	Dan Schoeff, <a href="mailto:schoeff.daniel@epa.gov">schoeff.daniel@epa.gov</a> , (202) 566-1540.
Napropamide Case Number 2450 .....	EPA-HQ-OPP-2016-0019	Carolyn Smith, <a href="mailto:smith.carolyn@epa.gov">smith.carolyn@epa.gov</a> , (202) 566-2273.
Oxadiazon Case Number 2485 .....	EPA-HQ-OPP-2014-0782	Theodore Varns, <a href="mailto:varns.theodore@epa.gov">varns.theodore@epa.gov</a> , (202) 566-2241.
Permethrin Case Number 2510 .....	EPA-HQ-OPP-2011-0039	Megan Snyderman, <a href="mailto:snyderman.megan@epa.gov">snyderman.megan@epa.gov</a> , (202) 566-0639.
Pyridalyl Case Number 7451 .....	EPA-HQ-OPP-2019-0378	Rachel Eberius, <a href="mailto:eberius.rachel@epa.gov">eberius.rachel@epa.gov</a> , (202) 566-2223.

The proposed and proposed interim registration review decisions for the chemicals in the table above were posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments or information received during the 60-day comment period for the proposed and proposed interim decisions in the discussion for each pesticide listed in the table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim or final decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in Table 1 will remain open until all actions required in the decision have been completed.

Background on the registration review program is provided at: <https://www.epa.gov/pesticide-reevaluation>.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 22, 2022.

**Mary Elissa Reaves,**  
Director, Pesticide Re-Evaluation Division,  
Office of Pesticide Programs.

[FR Doc. 2022-09134 Filed 4-27-22; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-9747-01-ORD]

### EPA Board of Scientific Counselors; Notice of Charter Renewal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of charter renewal.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act, the EPA Board of Scientific Counselors (BOSC) is in the public interest and is necessary in connection with the performance of EPA's duties. Accordingly, the BOSC will be renewed for an additional two-year period. The purpose of the BOSC is to provide advice and recommendations to the Administrator regarding the Office of Research and Development's research program.

**FOR FURTHER INFORMATION CONTACT:** Inquiries may be directed to Tom Tracy, U.S. EPA, (Mail Code B343-01), 109 T.W. Alexander Drive, Research

Triangle Park, NC 27711, telephone (919) 541-4334, or [tracy.tom@epa.gov](mailto:tracy.tom@epa.gov).

**Mary Ross,**  
Director, Office of Science Advisor, Policy,  
and Engagement.

[FR Doc. 2022-09050 Filed 4-27-22; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2022-0327; FRL-9777-01-OCSPJ]

### Pesticide Program Dialogue Committee; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is announcing a virtual public meeting of the Pesticide Program Dialogue Committee (PPDC) on May 25 and 26, 2022, with participation by webcast only. There will be no in-person gathering for this meeting.

**DATES:** *Virtual meeting:* The virtual meeting will be held on Wednesday, May 25, 2022, from 11:00 a.m. to approximately 5:00 p.m., and Thursday, May 26, 2022, from 11 a.m. to approximately 5:00 p.m.

*Oral comments:* Requests to make oral comments during the virtual meeting should be provided when you register for the meeting through the link provided in **ADDRESSES**, or by emailing Shannon Jewell at [jewell.shannon@epa.gov](mailto:jewell.shannon@epa.gov), by noon on Tuesday, May 17, 2022.

*Accommodations requests:* To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

**ADDRESSES:** To find a link to register for the meeting, please visit <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc>.

**FOR FURTHER INFORMATION CONTACT:** Shannon Jewell, Designated Federal Officer (DFO) for the PPDC, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave NW (7101M), Washington, DC 20460; telephone number: (571) 289-9911; email address: [jewell.shannon@epa.gov](mailto:jewell.shannon@epa.gov).

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### A. Does this action apply to me?

You may be potentially affected by this action if you work in agricultural settings or if you are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*); the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*); the Pesticide Registration Improvement Act (PRIA) (which amends FIFRA section 33); and the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; state, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2022-0327, is available online at <https://www.regulations.gov>.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

## II. Background

The PPDC is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. appendix 2). EPA established the PPDC in September 1995 to provide policy advice, information and recommendations to the EPA Administrator through the Director of the Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention. The PPDC provides a public forum to discuss a wide variety of pesticide regulatory developments and reform initiatives, evolving public policy and program implementation issues associated with evaluating and reducing risks from the use of pesticides. The EPA will consider candidates from the following sectors: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; federal

and state/local/tribal governments; the general public; academia; and public health organizations.

### III. How do I participate in the virtual public meeting?

#### A. Virtual Meeting

The virtual meeting will be conducted via webcast. To register, please visit <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc> to find a link to register for the meeting. Instructions for joining the meeting will be sent via email to those that register for the meeting.

#### B. Oral Comments

Requests to make brief oral comments to the PPDC during the virtual meeting should be submitted when registering for the meeting online or by emailing the Designated Federal Officer, listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on the date set in the **DATES** section.

*Authority:* 5 U.S.C. appendix 2 *et seq.* and 7 U.S.C. 136 *et seq.*

Dated: April 19, 2022.

**Edward Messina,**

*Director, Office of Pesticide Programs.*

[FR Doc. 2022-09111 Filed 4-27-22; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1151; FR ID 84075]

### Information Collection Being Submitted for Review and Approval to Office of Management and Budget

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No

person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written comments and recommendations for the proposed information collection should be submitted on or before May 31, 2022.

**ADDRESSES:** Comments should be sent to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into [www.reginfo.gov](http://www.reginfo.gov) per the above instructions for it to be considered. In addition to submitting in [www.reginfo.gov](http://www.reginfo.gov) also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection, contact Nicole Ongele at (202) 418-2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called “Currently Under Review,” (3) click on the downward-pointing arrow in the “Select Agency” box below the “Currently Under Review” heading, (4) select “Federal Communications Commission” from the list of agencies presented in the “Select Agency” box, (5) click the “Submit” button to the right of the “Select Agency” box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

**SUPPLEMENTARY INFORMATION:** As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and

(d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

*OMB Control Number:* 3060-1151.

*Title:* Sections 1.1411, 1.1412, and 1.1415 Pole Attachment Access Requirements.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 1,313 respondents; 163,876 responses.

*Estimated Time per Response:* 0.50–6 hours.

*Frequency of Response:* On-occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

*Obligation to Respond:* Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 224.

*Total Annual Burden:* 112,534 hours.

*Total Annual Cost:* \$6,750,000.

*Privacy Act Impact Assessment:* No impact(s).

*Nature and Extent of Confidentiality:* No questions of a confidential nature are asked.

*Needs and Uses:* The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. In Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17-84, WT Docket No. 17-70, Third Report and Order and Declaratory Ruling, FCC 18-111 (2018) (Order), the Commission adopted rules that implement the pole attachment requirements in section 224 of the Communications Act of 1934, as amended. The Order substantially revised 47 CFR 1.1411 and 1.1412. It also added new 47 CFR 1.1415.

Section 1.1411. In the Order, the Commission adopted a one-touch, make-ready (OTMR) process for when a telecommunications carrier or cable television system (new attacher) elects to do the work itself to prepare a utility pole for a simple wireline attachment in the communications space. As part of the OTMR process, the new attacher typically first conducts a survey of the affected poles, giving the utility and

existing attachers a chance to be present for the survey. New attachers must elect the OTMR process in their pole attachment application and must demonstrate to the utility that the planned work qualifies for OTMR. The utility then must determine whether the pole attachment application is complete and whether the work qualifies for OTMR, and then must either grant or deny pole access and explain its decision in writing. The utility also can object to the new attacher's determination that the work qualifies for OTMR, and that objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relates to a determination that the make-ready is not simple. If the new attacher's OTMR application is approved, then it can proceed with OTMR work by giving advance notice to the utility and existing attachers and allowing them an opportunity to be present when OTMR work is being done. New attachers must provide immediate notice to affected utilities and existing attachers if outages or equipment damage is caused by their OTMR work. Finally, new attachers must provide notice to affected utilities and existing attachers after OTMR work is completed, allowing them to inspect the work and request remediation, if necessary. The Commission also adopted changes to its existing pole attachment timeline, which still will be used for complex work, work above the communications space on a utility pole, and in situations where new attachers do not want to elect OTMR. The Commission largely kept the existing pole attachment timeline intact, except for the following changes: (1) Revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether an application is complete; (2) requiring utilities to provide at least three business days' advance notice of any surveys to attachers; (3) establishing a 30-day deadline for completion of all make-ready work in the communications space; (4) eliminating the 15-day utility make-ready period for communications space attachments; (5) streamlining the utility's notice requirements; (6) enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines; (7) providing notice requirements when

new attachers elect self-help, such notices to be given when new attachers perform self-help surveys and make-ready work, when outages or equipment damage results from self-help work, and upon completion of self-help work to allow for inspection; (8) allowing utilities to meet the survey requirement by electing to use surveys previously prepared on the affected poles by new attachers; and (9) requiring utilities to provide detailed make-ready cost estimates and final invoices on a pole-by-pole basis if requested by new attachers. Both utilities and existing attachers can deviate from the existing pole attachment make-ready timeline for reasons of safety or service interruption by giving written notice to the affected parties that includes a detailed explanation of the need for the deviation and a new completion date. The deviation shall be for a period no longer than necessary to complete make-ready on the affected poles, and the deviating party shall resume make-ready without discrimination when it returns to routine operations.

Section 1.1412. The Commission required utilities to make available, and keep up-to-date, a reasonably sufficient list of contractors that they authorize to perform surveys and make-ready work that are complex or involve self-help work above the communications space of a utility pole. Attachers can request to add to the list any contractor that meets certain minimum qualifications, subject to the utility's ability to reasonably object. For simple work, a utility may, but is not required, to keep an up-to-date, reasonably sufficient list of contractors that they authorize to perform surveys and simple make-ready work. For any utility-supplied contractor list, the utility must ensure that the contractors meet certain minimum requirements. Attachers can request to add to the list any contractor that meets the minimum qualifications, subject to the utility's ability to reasonably object. If the utility does not provide a list of approved contractors for surveys or simple make-ready, or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the minimum requirements, subject to notice and the utility's ability to disqualify the chosen contractor for reasonable safety or reliability concerns.

Section 1.1415. The Commission codified its policy that utilities may not require an attacher to obtain prior approval for overlanding on an attacher's existing wires or for third-party overlanding of an existing attachment when such overlanding is

conducted with the permission of the existing attacher. In addition, the Commission adopted a rule that allows utilities to establish reasonable advance notice requirements for overlanding (up to 15 days' advance notice). If a utility requires advance notice for overlanding, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, then it must provide specific documentation of the issue to the party seeking to overlash within the 15-day advance notice period, and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. An overlanding party must notify the affected utility within 15 days of completion of the overlash and provide the affected utility at least 90 days to inspect the overlash. If damage or code violations are discovered by the utility during the inspection, then it must notify the overlanding party, provide adequate documentation of the problem, and elect to either fix the problem itself at the overlanding party's expense or require remediation by the overlanding party.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2022-09031 Filed 4-27-22; 8:45 am]

**BILLING CODE 6712-01-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

**[OMB 3060-1148; FR ID 84025]**

### **Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority**

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection.

Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before June 27, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060-1148.

*Title:* Section 79.3, Audio Description of Video Programming.

*Form Number:* Not Applicable.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities, Not for profit entities and Individuals or households.

*Number of Respondents and Responses:* 50 respondents, 54 responses.

*Estimated Time per Response:* 1-5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 116 hours.

*Total Annual Cost:* \$22,740.

*Obligation To Respond:* Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 303, and 613.

*Needs and Uses:* Audio description is the insertion of audio narrated

descriptions of a television program's key visual elements into natural pauses in the program's dialogue, thus making video programming more accessible to individuals who are blind or visually impaired. The information collection requirements consist of the following:

*Petitions for exemption based on "economic burden" (47 CFR 79.3(d)).* (1) Pursuant to 47 CFR 79.3(d), a video programming provider may petition the Commission for a full or partial exemption from the audio description requirements based upon a showing that the requirements would be economically burdensome. (2) Petitions for exemption must be filed with the Commission, placed on public notice, and subject to comment from the public.

*(b) Non-form consumer complaints alleging violations of the audio description rules (47 CFR 79.3(e)).* (1) Section 79.3(e) of the rules provides that a complaint alleging a violation of the audio description rules may be transmitted to the Commission by "any reasonable means," and that each complaint must include: (i) The name and address of the complainant; (ii) the name and address of the broadcast station against whom the complaint is alleged and its call letters and network affiliation, or the name and address of the MVPD against whom the complaint is alleged and the name of the network that provides the programming that is the subject of the complaint; (iii) a statement of facts sufficient to show that the video programming distributor has violated or is violating the Commission's rules, and, if applicable, the date and time of the alleged violation; (iv) the specific relief or satisfaction sought by the complainant; (v) the complainant's preferred format or method of response to the complaint (such as letter, facsimile transmission, telephone (voice/TRS/TTY), internet email, or some other method that would best accommodate the complainant's disability); and (vi) a certification that the complainant attempted in good faith to resolve the dispute with the broadcast station or MVPD against whom the complaint is alleged. (2) After the Commission receives the complaint, the Commission notifies the video programming distributor (VPD) of the complaint, and the VPD generally has 30 days to reply.

Federal Communications Commission.

**Marlene Dortch,**  
Secretary.

[FR Doc. 2022-09030 Filed 4-27-22; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0152; Docket No. 2022-0053; Sequence No. 5]

#### Submission for OMB Review; Service Contracting

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding service contracting.

**DATES:** Submit comments on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

Additionally, submit a copy to GSA through <https://www.regulations.gov> and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

*Instructions:* All items submitted must cite OMB Control No. 9000-0152, Service Contracting. Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](https://www.regulations.gov), approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov).

**FOR FURTHER INFORMATION CONTACT:** Zenaida Delgado, Procurement Analyst, at telephone 202-969-7207, or [zenaida.delgado@gsa.gov](mailto:zenaida.delgado@gsa.gov).

**SUPPLEMENTARY INFORMATION:**

**A. OMB Control Number, Title, and Any Associated Form(s)**

9000–0152, Service Contracting.

**B. Need and Uses**

This justification supports an extension of OMB Control No. 9000–0152. This clearance covers the information that offerors must submit to comply with the following Federal Acquisition Regulation (FAR) requirement:

- FAR 52.237–10, Identification of Uncompensated Overtime. This provision requires offerors, when professional or technical services are acquired on the basis of the number of hours to be provided, to identify uncompensated overtime hours in excess of 40 hours per week, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

The contracting officer will use the collected information to perform an adequate cost realism analysis of the offerors' proposed labor rates. Proposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered by the contracting officer in a risk assessment and evaluated appropriately. The primary purpose for obtaining the information and using it during the source selection process is to discourage the use of uncompensated overtime.

**C. Annual Burden**

*Respondents:* 19,738.

*Total Annual Responses:* 19,738.

*Total Burden Hours:* 9,869.

**D. Public Comment**

A 60-day notice was published in the **Federal Register** at 87 FR 9356, on February 18, 2022. A comment was received; however, it did not change the estimate of the burden.

*Comment:* The commenter expressed his approval of the details set forth under the Federal Regulations in regard to serving contracts and other collaborative efforts in the aerospace industry.

*Response:* Noted. The commenter did not express an opinion on whether the estimated number of burden hours is accurate; or ways to minimize the burden of the collection of information.

*Obtaining Copies:* Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division by calling 202–501–4755 or emailing [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite OMB

Control No. 9000–0152, Service Contracting.

**Janet Fry,**

*Director, Federal Acquisition Policy Division,  
Office of Governmentwide Acquisition Policy,  
Office of Acquisition Policy, Office of  
Governmentwide Policy.*

[FR Doc. 2022–09155 Filed 4–27–22; 8:45 am]

**BILLING CODE 6820–EP–P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Agency for Healthcare Research and Quality****Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Agency for Healthcare Research and Quality, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: “TeamSTEPPS® Stakeholder Surveys for AHRQ’s ACTION III Diagnostic Safety Capacity Building Contract Task.” This proposed information collection was previously published in the **Federal Register** on February 9th, 2022 and 60 days for public comment. AHRQ did not receive substantive comments from members of the public during this period. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at [doris.lefkowitz@AHRQ.hhs.gov](mailto:doris.lefkowitz@AHRQ.hhs.gov).

**SUPPLEMENTARY INFORMATION:****Proposed Project****TeamSTEPPS® Stakeholder Surveys for AHRQ’s ACTION III Diagnostic Safety Capacity Building Contract Task 3**

AHRQ awarded a contract to the MedStar Health Research Institute (MHRI) in 2019 and received OMB fast

track clearance (OMB control number 0935–0179, expiration date of 11/30/23), to provide program support and expertise related to improving diagnostic safety and quality across five distinct contract tasks. Task 3 of the contract is to develop, pilot test and promote a TeamSTEPPS® Course to improve communication among providers related to diagnosis. TeamSTEPPS® to Improve Diagnosis provides communication strategies, including methods to improve intra-professional communication and communication during the referral process and to practice mutual support and situation monitoring during the diagnostic process. TeamSTEPPS® to Improve Diagnosis includes an educational module for leaders on strategies to facilitate improved communication with and among providers related to diagnosis. This module also includes a Team Assessment Tool for Improving Diagnosis (the “Team Assessment Tool”).

The Team Assessment Tool is an instrument developed as a method of self-assessment, with the goal of helping teams reflect on their current diagnostic and teamwork practices. In addition, it orients them to the repertoire of tools available within the TeamSTEPPS for Improving Diagnosis course that are available to support improvement efforts. The Team Assessment Tool asks participants to complete self-assessment ratings as a mechanism to identify strengths and opportunities for improvement in unit-based teamwork. The unit level aggregate results of the assessments help unit leaders identify priorities for training via use of course modules and specific interventions with their diagnostic improvement teams.

AHRQ would like to further develop this Team Assessment Tool into a measurement instrument, expanding on its intended use as an educational activity and formative assessment. The opportunity to provide evidence (via publication in peer reviewed journals) that the tool is both valid and reliable will strengthen its acceptance in the care delivery community and provide a scientifically sound method for teams to assess changes in performance overtime. The Team Assessment Tool requires psychometric testing in order to ensure validity and reliability.

Psychometrics is the construction and validation of measurement instruments and assessing if these instruments are reliable (have consistency in measurement) and valid (have accuracy in measurement). Reliability and validity indicate how well a method,

technique, test, or instrument is truly measuring what it intends to measure.

The contractor has conducted precursor psychometric testing on the Team Assessment Tool, which included the following: (1) Item wording and scale refinement, (2) Project Team Subject Matter Expert content review, (3) Non-Project Team Subject Matter Expert review, (4) End-user feedback, and (5) Instrument refinement. This work puts the reliability and validity of the indicators of the instrument at an optimal starting point for full psychometric testing.

Full psychometric testing of this instrument means the scaling must be evaluated extensively, which will require a sample of at least 359 individual care team members (physicians, nurses, ancillary staff, etc.) from diverse clinical settings to participate in a 15-minute, anonymous, online survey distributed via a shared electronic survey link. Individual care team members will be recruited from across 9 health systems or care settings. The survey will ask participants to read through and complete the questions; participants will not be privy to the results of the survey.

The contractor will examine this sample of results via analyses to determine the stability of the instrument and its indicators, ensuring parallel measurements, homogeneity among indicators, concurrent, convergent, and discriminant validity, latent constructs of the tool, the extent to which measures of the same concept correlate and diverge, and the degree of that correlation in evaluating the instrument's ability to discriminate between different groups with various levels and familiarity with safety culture. It is important to note the

responses on the surveys are not being evaluated, but rather the consistency with which the questions are answered is being evaluated (*i.e.*, determining whether the questions are being interpreted the same by all the users), despite diverse healthcare settings and varying levels of experience and familiarity with TeamSTEPPS. The combination of these psychometric methods will allow for internal and external validity and reliability to be assessed, to create a psychometrically sound instrument vetted for potential widespread adoption.

The Team Assessment Tool instrument will undergo remote usability testing of a survey to refine questions. To execute this task, the contractor has assembled an interprofessional team to execute any or all of the following methods for generating reliability and validity evidence that would be applicable to this specific tool: (1) Parallel forms reliability, (2) internal consistency reliability, (3) inter-rater reliability, (4) content validity, and (5) construct validity, using a multitrait-multimethod matrix and/or known groups testing.

This information collection has the following goal:

1. To determine the stability of the Team Assessment Tool instrument and its indicators in improving communication to reduce diagnostic errors, by quantitatively examining the correlation among responses of each indicator.

This study is being conducted by AHRQ through its contractor, MedStar Health Research Institute, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the

quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C 299a(a)(1) and (2).

### Method of Collection

To achieve the goal of this project the following information collection instruments will be completed using individual surveys:

(1) *Setting Demographics Survey*: Prior to testing of the instrument, each health system will take a brief survey to describe the characteristics of the sites engaged in pilot testing (*e.g.*, size, diagnostic team member role diversity, and familiarity with patient safety and quality improvement activities).

(2) *TeamSTEPPS® Team Assessment Tool for Improving Diagnosis*: This is collected from individual survey respondents, who are diverse staff members in a diagnostic team. The consistency with which the questions are interpreted and answered among respondents will be evaluated to determine the stability among indicators on the instrument.

AHRQ will use the information collected through this Information Collection Request to assess and enhance the feasibility of adopting a course to improve communication among providers related to diagnosis. AHRQ's ability to publicly share a Team Assessment Tool that has been scientifically validated is expected to be of great interest to the health care community and important in helping organizations prioritize improvement efforts.

### Estimated Annual Respondent Burden

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Setting Demographics Survey .....	9	1	0.25	2.25
TeamSTEPPS® Team Assessment Tool for Improving Diagnosis .....	350	1	0.25	87.5
Total .....	359	.....	.....	89.75

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate	Total cost burden
Setting Demographics Survey .....	9	2.25	<sup>a</sup> \$57.12	\$128.52
TeamSTEPPS® Team Assessment Tool for Improving Diagnosis .....	265	66.25	<sup>b</sup> 103.06	\$6,827.73
TeamSTEPPS® Team Assessment Tool for Improving Diagnosis .....	85	21.25	<sup>c</sup> 15.50	\$329.38
Total .....	359	89.75	.....	7,285.63

<sup>a</sup> Based on the mean wages for *Medical and Health Services Managers (Code 11-9111)*.

<sup>b</sup>Based on the mean wages for *Family Medicine Physicians (Code 29–1215)*.

<sup>c</sup>Based on the mean wages for *HC Support Occupations (Code 31–0000)*.

Occupational Employment Statistics, May 2020 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. [https://www.bls.gov/oes/current/oes\\_nat.htm#b29-0000](https://www.bls.gov/oes/current/oes_nat.htm#b29-0000).

## Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 22, 2022.

**Marquita Cullom,**  
*Associate Director.*

[FR Doc. 2022–09026 Filed 4–27–22; 8:45 am]

BILLING CODE 4160–90–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10391, CMS–R–74, CMS–R–306, and CMS–10791]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Methods for Assuring Access to Covered Medicaid Services Under 42 CFR 447.203 and 447.204; *Use:* Current regulations at 42 CFR 447.203(b) require states to develop an access monitoring review plan (AMRP) that is updated at least every three years for: Primary care services, physician specialist services, behavioral health services, pre and post-natal obstetric services (including labor and delivery), and home health services. When states reduce rates for other Medicaid services, they must add those services to the AMRP and monitor the effects of the rate reductions for 3 years. If access issues are detected, a state must submit a corrective action plan to CMS within 90 days and work to address the issues within 12 months. Section 447.203(b)(7) requires that states have mechanisms to obtain ongoing beneficiary and provider feedback. A state is also required to maintain a record of data on public input and how the state responded to the input. Prior to submitting proposals to reduce or restructure Medicaid service payment rates, states must receive input from beneficiaries, providers, and other affected stakeholders on the extent of beneficiary access to the affected services.

The information is used by states to document that access to care is in compliance with section 1902(a)(30)(A) of the Social Security Act, to identify issues with access within a state's Medicaid program, and to inform any necessary programmatic changes to address issues with access to care. CMS uses the information to make informed approval decisions on State plan amendments that propose to make Medicaid rate reductions or restructure payment rates and to provide the necessary information for CMS to monitor ongoing compliance with section 1902(a)(30)(A). Beneficiaries, providers and other affected stakeholders may use the information to

raise access issues to state Medicaid agencies and work with agencies to address those issues. *Form Number:* CMS-10391 (OMB control number: 0938-1134); *Frequency:* Annually; *Affected Public:* State, Local, or Tribal Governments); *Number of Respondents:* 51; *Total Annual Responses:* 212; *Total Annual Hours:* 12,262. (For questions regarding this collection contact Jeremy Silanskis at 410-786-1592.)

**2. Type of Information Collection**  
*Request:* Extension of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System Reporting and Supporting Regulations; *Use:* Section 1137 of the Social Security Act requires that States verify the income and eligibility information contained on the applicant's application and in the applicant's case file through data matches with the agencies and entities identified in this section. The State Medicaid/CHIP agency will report the existence of a system to collect all information needed to determine and redetermine eligibility for Medicaid and CHIP. The State Medicaid/CHIP agency will attest to using the PARIS system in determining beneficiary eligibility in Medicaid or CHIP benefit programs. *Form Number:* CMS-R-74 (OMB control number: 0938-0467); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 55; *Total Annual Responses:* 3,241; *Total Annual Hours:* 1,071. (For policy questions regarding this collection contact Stephanie Bell at 410-786-0617.)

**3. Type of Information Collection**  
*Request:* Extension of a currently approved collection; *Title of Information Collection:* Use of Restraint and Seclusion in Psychiatric Residential Treatment Facilities (PRTFs) for Individuals Under Age 21 and Supporting Regulations; *Use:* Psychiatric residential treatment facilities are required to report deaths, serious injuries and attempted suicides to the State Medicaid Agency and the Protection and Advocacy Organization. They are also required to provide residents the restraint and seclusion policy in writing, and to document in the residents' records all activities involving the use of restraint and seclusion. *Form Number:* CMS-R-306 (OMB control number: 0938-0833); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 390; *Total Annual Responses:* 1,466,823; *Total Annual Hours:* 449,609. (For policy questions regarding this collection contact Kirsten Jensen at 410-786-8146.)

**4. Type of Information Collection**  
*Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Requirements Related to Surprise Billing; Part II; *Use:* On December 27, 2020, the Consolidated Appropriations Act, 2021 (CAA), which includes the No Surprises Act, was signed into law. The No Surprises Act provides Federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise bills arise most frequently. The information requirements of the October 2021 interim final rules included in CMS-10791 have two components: Good Faith Estimates. Providers and facilities must furnish a good faith estimate of expected items and services beginning on or after January 1, 2022, which will allow uninsured (or self-pay) individuals to have access to information about health care pricing before receiving care. This information will allow uninsured (or self-pay) individuals to evaluate options for receiving health care, make cost-conscious health care purchasing decisions, and reduce surprises in relation to their health care costs for items and services. Additionally, uninsured (or self-pay) individuals will need a good faith estimate to initiate the patient-provider dispute resolution process. HHS will request information from entities seeking to be certified or recertified as an SDR entity. This information will be used to assess whether or not the entity satisfies the requirements for certification. *Form Number:* CMS-10791 (OMB control number: 0938-NEW); *Frequency:* Annually; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 4,010,691; *Total Annual Responses:* 4,010,691; *Total Annual Hours:* 6,242,227. For policy questions regarding this collection contact Janny Frimpong at 301-492-4174.

Dated: April 25, 2022.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2022-09112 Filed 4-27-22; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

[OMB No. 0970-0427]

#### Submission for OMB Review; Head Start Program Information Report

**AGENCY:** Office of Head Start, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families' (ACF) is requesting a 3-year extension of the Head Start Program Information Report (PIR), Monthly Enrollment reporting instrument, and Center Locations and Contacts instrument (OMB #0970-0427, expiration 4/30/2022). OHS has made updates to these instruments, as described below.

**DATES:** *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). Identify all emailed requests by the title of the information collection.

#### SUPPLEMENTARY INFORMATION:

*Description:* OHS is requesting an extension, with changes, of the Head Start PIR information collection authority. The following instruments are included in this information collection: (1) PIR, (2) Monthly Enrollment, and (3) Center Locations and Contacts. The PIR is used for federal program management purposes including to promote decision-making using data, is a major source of information used to respond to Congressional and public inquiries about Head Start programs, and is used often by researchers. Monthly enrollment reporting supports oversight activities related to promoting full enrollment of programs. Center locations and contact reporting is used

to help parents locate a program in their community. In general, these information collections together create key administrative datasets to support administration of the program.

The proposed changes include new questions on the PIR to collect

information on collaboration activities with Part C agencies and the average benefits provided to certain education staff as part of their compensation.

Additionally, new questions were added to the centers reporting to capture participation in a local or state Quality

Rating Improvement System and licensing status for each center. Lastly, minor changes were made to these instruments for clarification purposes.

*Respondents:* Head Start Grant Recipients.

#### ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Head Start PIR .....	1,600	2.25	1	3,600
Monthly Enrollment .....	1,600	27	0.05	2,160
Center Locations and Contacts .....	1,600	15	0.25	6,000

*Estimated Total Annual Burden Hours:* 11,760.

*Authority:* 42 U.S.C. 9801 *et seq.*

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2022-09053 Filed 4-27-22; 8:45 am]

**BILLING CODE 4184-40-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Administration for Children and Families

##### Submission for OMB Review; OPRE Data Collection for State Child Welfare Data Linkages Descriptive Study (New Collection)

**AGENCY:** Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF) is requesting approval from the Office of Management and Budget (OMB) for a new primary data collection about connected child welfare data. We define connected data as child welfare data that are linked or integrated with data from other systems or agencies. The

State Child Welfare Data Linkages Descriptive Study (Data Linkages Descriptive Study) will gather systematic information on the extent to which states connect their child maltreatment data to other data sets; how any linked data sets are created, managed, and used; and challenges states face in linking data.

**DATES:** *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. You can also obtain copies of the proposed collection of information by emailing [OPREinfocollection@acf.hhs.gov](mailto:OPREinfocollection@acf.hhs.gov). All emailed requests should be identified by the title of the information collection.

#### SUPPLEMENTARY INFORMATION:

*Description:* The State Child Welfare Data Linkages Descriptive Study will examine the extent to which child welfare agencies in 50 states, Puerto Rico, and Washington, DC, link administrative data on child maltreatment to data in other systems and to learn more about states' practices related to sharing and linking data. The study aims to inform the ongoing and accurate surveillance of child maltreatment and identify facilitators and barriers to connected data efforts (integrated data or linked data).

These data are not available from existing sources. This study aims to present an internally valid description of the data capacity of participating state child welfare agencies, not to promote statistical generalization to different sites or service populations.

*Respondents:* State child welfare directors, designated state child welfare agency staff (identified by a state child welfare director as having knowledge about the state's connected data efforts), and designated county staff (identified by a state child welfare director as having knowledge about a county's connected data efforts).

#### ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Initial survey of state child welfare directors .....	52	1	0.67	35	18
Survey of connected data efforts <sup>1</sup> .....	208	1	0.58	121	61
Interviews with individuals responsible for connected data efforts .....	120	1	1	120	60

<sup>1</sup> Estimates for burden hours define respondent by survey administration and not necessarily by the number of different people completing the survey.

*Estimated Total Annual Burden Hours:* 139.

*Authority:* 42 U.S.C. 5105.

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2022–09028 Filed 4–27–22; 8:45 am]

**BILLING CODE 4184–29–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

#### Submission for OMB Review; LIHEAP Carryover and Reallotment Report (OMB #0970–0106)

**AGENCY:** Office of Community Services, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF) is requesting additional comments on the renewal of the Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report (Office of Management and Budget (OMB) #0970–0106, expiration date

April 30, 2022) with changes. Changes include the addition of one and the removal of two sources in pre-populated lines, the re-descriptions of annual funding sources, and minor wording changes.

**DATES:** *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. You can also obtain copies of the proposed collection of information by emailing [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). Identify all emailed requests by the title of the information collection.

#### SUPPLEMENTARY INFORMATION:

**Description:** ACF is requesting changes in the collection of data with the Carryover and Reallotment Report for FY 2022, a form for the collection of data, and the Simplified Instructions for Timely Obligations of LIHEAP Regular Block Grant, Reallotted, and Supplemental Funds and Reporting Funds for Carryover and Reallotment. The form clarifies the information being requested and ensures the submission of all the required information. The form facilitates our response to numerous queries each year concerning the amounts of obligated funds. Use of the form is mandatory for prior-year grant recipients that seek current current-year LIHEAP funds.

ACF published a **Federal Register** notice on February 11, 2022 soliciting 60 days of public comment on the renewal of the LIHEAP Carryover and Reallotment Report with changes and the continuation of requiring grant recipients to engage in this data collection annually. ACF received no comments on this notice.

**Respondents:** State governments, tribal governments, insular areas, and the District of Columbia.

#### ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
LIHEAP Carryover and Reallotment Report .....	206	1	7	1,442

*Estimated Total Annual Burden Hours:* 1,442.

*Authority:* 42 U.S.C. 8626(b)(2)(B).

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2022–09063 Filed 4–27–22; 8:45 am]

**BILLING CODE 4184–80–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2017–N–6266]

#### Request for Nominations on the Pediatric Advisory Committee

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is requesting that any industry organizations interested in participating in the selection of a nonvoting industry

representative to serve on the Pediatric Advisory Committee for the Office of the Commissioner notify FDA in writing. FDA is also requesting nominations for a nonvoting industry representative(s) to serve on the Pediatric Advisory Committee. A nominee may either be self-nominated or nominated by an organization to serve as a nonvoting industry representative. Nominations will be accepted for current vacancies effective with this notice.

**DATES:** Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests must send a letter stating that interest to FDA by May 31, 2022. (See sections I and II of this document for further details.) Concurrently, nomination materials for prospective candidates should be sent to FDA by May 31, 2022.

**ADDRESSES:** All statements of interest from industry organizations interested in participating in the selection process

of nonvoting industry representative nomination should be sent to Shivana Srivastava (see **FOR FURTHER INFORMATION CONTACT**). All nominations for nonvoting industry representatives may be submitted electronically by accessing the FDA Advisory Committee Membership Nomination Portal: <https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm> or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5103, Silver Spring, MD 20993–0002. Information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA’s website at <https://www.fda.gov/AdvisoryCommittees/default.htm>.

#### FOR FURTHER INFORMATION CONTACT:

Shivana Srivastava, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5157, Silver Spring,

MD 20993, 301–796–8695, email: [Shivana.Srivastava@fda.hhs.gov](mailto:Shivana.Srivastava@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** The Agency intends to add a nonvoting industry representative(s) to the Pediatric Advisory Committee:

### I. General Description of the Committee Duties

The Committee reviews, evaluates, and makes recommendations to the Commissioner of Food and Drugs (the Commissioner) regarding (1) pediatric research conducted under sections 351, 409I, and 499 of the Public Health Service Act (42 U.S.C. 262, 284m, and 290b) and sections 501, 502, 505, 505A, 505B, 510(k), 515, and 520(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 355, 355a, 355c, 360(k), 360e, and 360j(m)); (2) identification of research priorities related to pediatric therapeutics (including drugs and biological products) and medical devices for pediatric populations and the need for additional diagnostics and treatments of specific pediatric diseases or conditions; (3) the ethics, design, and analysis of clinical trials related to pediatric therapeutics (including drugs and biological products) and medical devices; (4) pediatric labeling disputes as specified in Public Law 107–109, Public Law 110–85, and Public Law 112–144; (5) pediatric labeling changes as specified in Public Law 107–109, Public Law 110–85, and Public Law 112–144; (6) adverse event reports for drugs studied under Public Law 107–109, Public Law 110–85, and Public Law 112–144; (7) any safety issues that may occur as specified in Public Law 107–109, Public Law 110–85, and Public Law 112–144; (8) any other pediatric issue or pediatric labeling dispute involving FDA-regulated products; (9) pediatric ethical issues including research involving children as subjects as specified in 21 CFR 50.54; and (10) any other matter involving pediatrics for which FDA has regulatory responsibility.

The Committee also advises and makes recommendations to the Secretary of Health and Human Services (the Secretary) (HHS) directly or to the Secretary through the Commissioner on research involving children as subjects that is conducted or supported by HHS as specified in 45 CFR 46.407.

### II. Selection Procedure

Any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests should send a letter stating that interest to the FDA contact (see **FOR FURTHER INFORMATION**

**CONTACT**) within 30 days of publication of this document (see **DATES**). Within the subsequent 30 days, FDA will send a letter to each organization that has expressed an interest, attaching a complete list of all such organizations, and a list of all nominees along with their current résumés. The letter will also state that it is the responsibility of the interested organizations to confer with one another and to select a candidate, within 60 days after the receipt of the FDA letter, to serve as the nonvoting member to represent industry interests for the committee. The interested organizations are not bound by the list of nominees in selecting a candidate. However, if no individual is selected within 60 days, the Commissioner will select the nonvoting member to represent industry interests.

### III. Nomination Procedure

Individuals may self-nominate and/or an organization may nominate one or more individuals to serve as a nonvoting industry representative. Contact information, a current resume, and the name of the committee of interest should be sent to the FDA Advisory Committee Membership Nomination Portal (see **ADDRESSES**) within 30 days of publication of this document (see **DATES**). FDA will forward all nominations to the organizations expressing interest in participating in the selection process for the committee. (Persons who nominate themselves as nonvoting industry representatives will not participate in the selection process).

FDA seeks to include the views of individuals on its advisory committees regardless of their gender identification, religious affiliation, racial and ethnic identification, or disability status and therefore encourages nominations of appropriately qualified candidates from all groups.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 22, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–09071 Filed 4–27–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2022–N–0620]

### Advisory Committee; Pharmaceutical Science and Clinical Pharmacology Advisory Committee; Renewal

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; renewal of Federal advisory committee.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the renewal of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Pharmaceutical Science and Clinical Pharmacology Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the January 22, 2024, expiration date.

**DATES:** Authority for the Pharmaceutical Science and Clinical Pharmacology Advisory Committee will expire on January 22, 2024, unless the Commissioner formally determines that renewal is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Rhea Bhatt, Division of Advisory Committee and Consultant Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993, 301–796–9001, email: [ACPS-CP@fda.hhs.gov](mailto:ACPS-CP@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Pharmaceutical Science and Clinical Pharmacology Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates scientific, clinical and technical issues related to the safety and effectiveness of drug products for use in the treatment of a broad spectrum of human diseases, the quality characteristics which such

drugs purport or are represented to have, and as required, any other product for which FDA has regulatory responsibility, and make appropriate recommendations to the Commissioner. The Committee may also review Agency sponsored intramural and extramural biomedical research programs in support of FDA's drug regulatory responsibilities and its critical path initiatives related to improving the efficacy and safety of drugs and improving the efficiency of drug development.

The Committee shall consist of a core of 14 voting members including two Chairpersons. Members and Chairpersons are selected by the Commissioner or designee from among authorities knowledgeable in the fields of pharmaceutical sciences (pharmaceutical manufacturing, bioequivalence research, laboratory analytical techniques, pharmaceutical chemistry, physiochemistry, biochemistry, molecular biology, immunology, microbiology) and clinical pharmacology (dose-response, pharmacokinetics-pharmacodynamics, modeling and simulation, pharmacogenomics, clinical trial design, pediatrics and special populations and innovative methods in drug development), biostatistics, related biomedical and pharmacological specialties, current good manufacturing practices, and quality systems implementation. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include up to three non-voting representative members who are identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at <https://www.fda.gov/advisory-committees/human-drug-advisory-committees/pharmaceutical-science-and-clinical-pharmacology-advisory-committee> or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no

change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at <http://www.fda.gov/AdvisoryCommittees/default.htm>.

Dated: April 22, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022-09076 Filed 4-27-22; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2001-D-0067]

#### Providing Submissions in Electronic Format—Postmarketing Safety Reports; Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled "Providing Submissions in Electronic Format—Postmarketing Safety Reports." This guidance provides general information pertaining to electronic submission of postmarketing safety reports (individual case safety reports (ICSRs), attachments to ICSR (ICSR attachments), and other postmarketing safety reports) for certain human drugs, biological products, and combination products. This guidance finalizes the revised draft guidance entitled "Providing Submissions in Electronic Format—Postmarketing Safety Reports," issued in June 2014.

**DATES:** The announcement of the guidance is published in the **Federal Register** on April 28, 2022.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

#### *Electronic Submissions*

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to

the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### *Written/Paper Submissions*

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket No. FDA-2001-D-0067 for "Providing Submissions in Electronic Format—Postmarketing Safety Reports." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on

<https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

#### FOR FURTHER INFORMATION CONTACT:

*For information concerning human drug products:* Suranjan De, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4307, Silver Spring, MD 20993–0002, 240–402–0498.

*For information concerning human biological products:* Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

#### SUPPLEMENTARY INFORMATION:

## I. Background

FDA is announcing the availability of a guidance for industry entitled “Providing Submissions in Electronic Format—Postmarketing Safety Reports.” This guidance provides general information pertaining to electronic submission of postmarketing safety reports (ICSRs, ICSR attachments, and other postmarketing safety reports) under the following provisions:

- 21 CFR 314.80 and 314.98 (regarding products with approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs), respectively, including combination products or drug constituent parts with approved NDAs or ANDAs)
- 21 CFR 600.80 (regarding products with approved biologics license applications (BLAs), including combination products or biological product constituent parts with approved BLAs)
- 21 CFR part 4, subpart B (requiring additional reports for combination products with approved NDAs, ANDAs, or BLAs)
- 21 CFR 310.305 (regarding prescription drug products marketed for human use without approved NDAs or ANDAs, including prescription drug products that are compounded by facilities registered as outsourcing facilities under section 503B of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 353b))
- 21 CFR 329.100 and section 760 of the FD&C Act (21 U.S.C. 379aa) (regarding nonprescription drug products marketed for human use without approved NDAs or ANDAs)

This guidance does not apply to the following: Vaccines, human cells, tissues, and cellular tissue-based products regulated under section 361 of the Public Health Service Act (42 U.S.C. 264), whole blood or blood components, combination products with a drug or biological product constituent part marketed under a device application, or lot distribution reports.

On June 10, 2014, FDA published a final rule (79 FR 33072) to amend its postmarketing safety reporting regulations for human drug and biological products to require that persons subject to mandatory reporting requirements submit safety reports in an electronic format that the Agency can process, review, and archive. Elsewhere in the June 10, 2014, **Federal Register** (79 FR 33220), FDA announced the availability of a revised draft guidance entitled “Providing Submissions in Electronic Format—Postmarketing Safety Reports,” which revised and

replaced the draft guidance for industry entitled “Providing Regulatory Submissions in Electronic Format—Postmarketing Individual Case Safety Reports,” issued on June 12, 2008 (73 FR 33436). The guidance announced in this current notice finalizes the June 10, 2014, revised draft guidance of the same title. The Agency considered comments on the draft guidance while finalizing the guidance. Generally, we revised the draft guidance to update and clarify topics, such as: (1) Options for transmitting reports in electronic format; (2) the notification that submitters will receive when FDA has received the electronic postmarketing safety report; (3) requesting temporary waivers from the electronic submission requirement; and (4) information on the receipt date of electronic submissions in the case of submission failure.

This guidance is being issued consistent with FDA’s good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on “Providing Submissions in Electronic Format—Postmarketing Safety Reports.” It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

## II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR part 314 pertaining to postmarketing reporting of adverse drug experiences, including periodic and followup reports, have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 207 pertaining to registration of producers of drugs and listing of drugs in commercial distribution have been approved under OMB control number 0910–0045. The collections of information in 21 CFR parts 310, 314, and 600 pertaining to postmarketing reporting of adverse drug experiences for drugs subject to an NDA have been approved under OMB control number 0910–0291 (MedWatch Forms FDA 3500, 3500A, and 3500B). The collections of information in 21 CFR parts 310 and 314 pertaining to: (1) Postmarketing reporting of adverse drug experiences for drugs without approved

NDAs and the collections of information and (2) the submissions required by section 760 of the FD&C Act for nonprescription human drug products marketed without an approved application have been approved under OMB control number 0910–0230. The collections of information in 21 CFR part 600 for biological drug products have been approved under OMB control number 0910–0308. The collections of information pertaining to the electronic submission of adverse event reports in 21 CFR parts 310, 314, and 329 have been approved under OMB control number 0910–0645. The collections of information pertaining to submissions required for outsourcing facilities under section 503B of the FD&C Act have been approved under OMB control number 0910–0800. The collections of information in 21 CFR part 4 pertaining to postmarketing safety information sharing by constituent part applicants for combination products have been approved under OMB control number 0910–0834.

### III. Electronic Access

Persons with access to the internet may obtain the guidance at either <https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs>, <https://www.fda.gov/regulatory-information/search-fda-guidance-documents>, or <https://www.regulations.gov>.

Dated: April 21, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–09065 Filed 4–27–22; 8:45 am]

BILLING CODE 4164–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2019–N–0305]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Tobacco Products Subject to the Federal Food, Drug, and Cosmetic Act

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA, we, or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each

proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on “Tobacco Products Subject to the Federal Food, Drug, and Cosmetic Act.”

**DATES:** Submit either electronic or written comments on the collection of information by June 27, 2022.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 27, 2022. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 27, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else’s Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see “Written/Paper Submissions” and “Instructions”).

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management

Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in “Instructions.”

**Instructions:** All submissions received must include the Docket No. FDA–2019–N–0305 for “Tobacco Products Subject to the Federal Food, Drug, and Cosmetic Act.” Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as “Confidential Submissions,” publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states “THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.” The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as “confidential.” Any information marked as “confidential” will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA’s posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

**FOR FURTHER INFORMATION CONTACT:** Jonnalynn Capezzuto, Office of Operations, Food and Drug

Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, [PRAStaff@fda.hhs.gov](mailto:PRAStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. “Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA’s functions, including whether the information will have practical utility; (2) the accuracy of FDA’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

### **Tobacco Products Subject to the Federal Food, Drug, and Cosmetic Act**

*OMB Control Number 0910–0768—Extension*

Tobacco products are governed by chapter IX of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (sections 900 through 920) (21 U.S.C. 387 through 21 U.S.C. 387t). Implementing regulations are found in 21 CFR subchapter K (21 CFR parts 1100 through 1150). This information collection supports the reporting, recordkeeping, and third-party disclosure requirements associated with statutory requirements applicable to tobacco products and set forth in Agency regulations. Section 910(a)(1) of the FD&C Act (21 U.S.C. 387j(a)(1)) defines a “new tobacco product” as a tobacco product that was not commercially marketed in the United States on February 15, 2007, or a modification (including a change in design, any component, any part, or any constituent, including a smoke constituent, or in the content, delivery, or form of nicotine, or any other additive or ingredient) of a tobacco product where the modified product was commercially marketed in the United States after February 15, 2007. An order under section 910(c)(1)(A)(i) of the FD&C Act is required prior to marketing a new tobacco product. This requirement applies unless the product has been shown to be substantially equivalent to a valid predicate product or is exempt from substantial equivalence (21 CFR 1107.1).

Section 910(b) of the FD&C Act states that a premarket tobacco application (PMTA) (21 CFR part 1114) shall contain full reports of all investigations

of health risks; a full statement of all components, ingredients, additives, and properties, and of the principle or principles of operation of such tobacco product; a full description of methods of manufacturing and processing (which includes: a listing of all manufacturing, packaging, and control sites for the product); an explanation of how the product complies with applicable tobacco product standards; samples of the product and its components; and labeling.

FDA also encourages persons who would like to study their new tobacco product to meet with the Office of Science (OS) in the Center for Tobacco Products (CTP) to discuss their investigational plan. The request for a meeting should be sent in writing to the Director of CTP’s Office of Science and should include adequate information for FDA to assess the potential utility of the meeting and to identify FDA staff necessary to discuss agenda items. The following web page details the process for requesting a meeting with OS and how FDA will respond: <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/meetings-industry-and-investigators-research-and-development-tobacco-products>.

FDA efforts regarding issuance of a final guidance for Harmful and Potentially Harmful Constituent reporting (and later a testing and reporting regulation under section 915 of the FD&C Act) is ongoing, and the guidance document will be issued consistent with our Good Guidance Practice regulations found in 21 CFR 10.115, which provide for public comment at any time.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Obtaining an FDA Order Authorizing Marketing of Tobacco Product (PTMA application) and 21 CFR 25.40 Environmental Assessments .....	200	3.75	750	1,713	1,284,750
Request for Meeting with CTP’s Office of Science to Discuss Investigational Plan .....	27	1	27	10	270
\$ 1143 Cigar Warning Plans .....	1	1	1	1	1
Total .....					1,285,021

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates an average burden per respondent of 1,500 hours to prepare a PMTA seeking an order from FDA allowing the marketing of a new tobacco

product. We assume, on average, an additional 213 hours is necessary to prepare an environmental assessment in accordance with the requirements of 21

CFR 25.40, for a total of 1,713 hours per PMTA application. This average represents a wide range of hours that will be required for these applications

under different circumstances, with a small number requiring more hours (e.g., as many as 5,000 hours for early applications that involve complex products and for which the company has no experience conducting studies or preparing analysis of public health impacts, or for which reliance on master files is not possible) as well as many requiring fewer hours (e.g., as few as 50 hours for applications for products that are very similar to other new products). A PMTA may require one or more types of studies including chemical analysis, nonclinical studies, and clinical studies. FDA also estimates the number of PMTAs that FDA expects to receive annually will be 750 (642 electronic nicotine delivery systems (ENDS) Liquids and 108 ENDS Delivery Systems).

FDA anticipates that the 27 potential respondents to this collection may need to meet with CTP's Office of Science to discuss their investigational plans. This number has been reduced based on the average number of meeting requests received over the past 3 years. To request this meeting, applicants should compile and submit information to FDA for meeting approval. FDA estimates that it will take approximately 270 hours to compile and request a meeting with OS. We have revised the hours per response to be consistent with the meetings information collection for originally regulated products (OMB control number 0910-0731).

Based on the September 2020 order vacating the health warning requirements for cigars and pipe tobacco (set forth in §§ 1143.3 and 1143.5) and remanding the Final Deeming Rule's warning requirements for cigars and pipe tobacco, we have removed the burden associated with this activity. We have included one token hour of burden associated with the requirements in § 1143 to acknowledge the requirement remains in the regulations.

We have adjusted our burden estimate, which has resulted in a decrease to the currently approved burden. The total estimated burden for this information collection is 1,285,021 reporting hours, and 778 annual responses. Our estimated burden for the information collection reflects an overall decrease of 2,779 hours and a corresponding decrease of 262 responses. We attribute this adjustment to updated information in the number of meeting requests with CTP's Office of Science to discuss investigational plans, the removal of burden for the cigar warning plans, the removal of the small-scale manufacturer reporting, and have therefore revised the estimated burden

and number of respondents to the information collection.

Dated: April 22, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022-09072 Filed 4-27-22; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2018-N-3758]

#### Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Expanded Access to Investigational Drugs for Treatment Use

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments (including recommendations) on the collection of information by May 31, 2022.

**ADDRESSES:** To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. The OMB control number for this information collection is 0910-0814. Also include the FDA docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A-12M, 11601 Landsdown St., North Bethesda, MD 20852, 301-796-8867, [PRASStaff@fda.hhs.gov](mailto:PRASStaff@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

#### Expanded Access to Investigational Drugs for Treatment Use

OMB Control Number 0910-0814—Revision

This information collection supports Agency regulations in 21 CFR part 312, subpart I, Expanded Access to Investigational Drugs for Treatment Use; associated guidance; and Form FDA 3926, Individual Patient Expanded Access Investigational New Drug Application (IND). The regulations govern the use of investigational new drugs, biologics, and approved drugs if availability is limited by a risk evaluation and mitigation strategy, when the primary purpose is to diagnose, monitor, or treat a patient's disease or condition. The goal of the expanded access program is to facilitate the availability of such products to patients with serious diseases or conditions when there is no comparable or satisfactory alternative therapy to diagnose, monitor, or treat the patient's disease or condition. The regulations provide that certain criteria be met, establish content and format requirements for associated reporting, and require that submissions include a cover sheet.

Although we continue to account for burden associated with the submission of expanded access requests for individual patients, we are revising the information collection to also account for burden attendant to other expanded access submissions, including commercial investigational new drug applications (INDs) that involve large groups of patients enrolled for treatment use of the investigational drug (§§ 312.300 through 312.320 (21 CFR 312.300 through 312.320)), currently approved under OMB control number 0910-0014. Because of FDA's long history of facilitating expanded access to investigational drugs for treatment use for patients with serious or immediately life-threatening diseases or conditions, our efforts in this regard are ongoing.

Form FDA 3926 was developed to assist respondents to the information collection. Form FDA 3926 requires the completion of data fields that enable us to uniformly collect the minimum information necessary from licensed physicians who want to request expanded access as prescribed in the applicable regulations. To supplement the form instructions, we issued guidance, most recently updated in October 2017, entitled "Individual Patient Expanded Access Applications: Form FDA 3926," available at <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/>

*individual-patient-expanded-access-applications-form-fda-3926*. As discussed in the guidance, § 312.310(b) contains additional submission requirements for individual patient expanded access requests. These respondents may continue to use either Form FDA 3926 or Form FDA 1571, Investigational New Drug Application (IND), for all types of IND submissions to satisfy requirements in 21 CFR 312.23(a) (approved under OMB control number 0910–0014). FDA considers a completed Form FDA 3926 signed by the physician and checked in the box in Field 10.a (Request for Authorization to use Form FDA 3926) to be a waiver

request in accordance with 21 CFR 312.10.

We are proposing the following revisions to data elements in Form FDA 3926 and will make corresponding revisions to the form instructions:

- Reorder Field 8, “Physician Name, Address, and Contact Information” to Field 1, and renumber remaining data fields accordingly;
- Add “Race and Ethnicity” as an optional item under the “Clinical Information/Brief Clinical History” field;
- Add “Request for Withdrawal” under the “Contents of Submission” field;
- Add technological enhancements to the electronic version of Form FDA

3926 that utilize user-based selections to prompt required data field entries. Currently, certain fields become grayed out if not required for the submission type selected.

Data elements in §§ 312.315 and 312.320 continue to be reported in Forms FDA 1571 and 1572, Statement of Investigator, (approved under OMB control number 0910–0014).

In the **Federal Register** of December 14, 2021 (86 FR 71069), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN—CENTER FOR DRUG EVALUATION AND RESEARCH <sup>1</sup>

Part 312, subpart I; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§§ 312.310(b) and 312.305(b); submissions related to expanded access and treatment of an individual patient: Form FDA 3926.	1,204	2.4958	3,005	0.75 ..... (45 minutes) ...	2,254
§ 312.310(d); submissions related to emergency use of an investigational new drug: Form FDA 3926.	1,265	2.843	3,596	16 .....	57,536
§§ 312.315(c) and 312.305(b); submissions related to expanded access and treatment of an intermediate-size patient population <sup>2</sup> .	88	3.64	320	120 .....	38,400
§ 312.320(b); submissions related to a treatment IND or treatment protocol <sup>2</sup> .	20	7	140	300 .....	42,000
Total .....	.....	.....	7,061	.....	140,190

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> Data elements are reported in Forms FDA 1571 and 1572, approved under OMB control number 0910–0014.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN—CENTER FOR BIOLOGICS EVALUATION AND RESEARCH <sup>1</sup>

Part 312, subpart I; activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
§§ 312.310(b) and 312.305(b); number of submissions related to expanded access and treatment of an individual patient: Form FDA 3926 .....	118	1.305	154	8	1,232
§ 312.310(d); number of submissions related to emergency use of an investigational new drug: Form FDA 3926 .....	1,591	4.2137	6,704	16	107,264
§§ 312.315(c) and 312.305(b); number of submissions related to expanded access and treatment of an intermediate-size patient population <sup>2</sup> .....	28	1	28	120	3,360
§ 312.320(b); number of submissions related to a treatment IND or treatment protocol <sup>2</sup> .....	15	1	15	300	4,500
Total .....	.....	.....	6,901	.....	116,356

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

<sup>2</sup> Data elements are reported in Forms FDA 1571 and 1572, approved under OMB control number 0910–0014.

The information collection reflects an increase in 254,750 burden hours and 11,568 responses annually since the last OMB review and approval of the information collection. We attribute this to an increase in the number of submissions.

Dated: April 22, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–09070 Filed 4–27–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

[OMB No. 0917–0041]

#### Request for Public Comment: 30-Day Information Collection: Indian Health Service Information Security Ticketing and Incident Reporting.

**AGENCY:** Indian Health Service, HHS.

**ACTION:** Notice and request for comments. Request for extension of approval.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to take this opportunity to comment on the information collection Office of Management and Budget (OMB) Control Number 0917–0041, titled, Information Security Ticketing and Incident Reporting. The purpose of this notice is to allow 30 days for public comment submitted

directly to OMB. A copy of the draft supporting statement is available at [www.regulations.gov](http://www.regulations.gov) (see Docket ID IHS\_FRDOC\_001).

**DATES:** *Comment Due Date:* May 31, 2022. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

**ADDRESSES:** *Direct Your Comments to OMB:* Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

**FOR FURTHER INFORMATION CONTACT:** To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer at: [Evonne.Bennett@ihs.gov](mailto:Evonne.Bennett@ihs.gov) or 301–443–4750.

**SUPPLEMENTARY INFORMATION:** This previously approved information collection project was last published in the **Federal Register** on February 17, 2022 (87 FR 9071), and allowed 60 days for public comment. No public comment was received in response to the notice. This notice announces our intent to submit this collection, which expires April 30, 2022, to OMB for approval of an extension, and to solicit comments on specific aspects for the proposed information collection.

*Title:* 0917–0041, “Information Security Ticketing and Incident Reporting.”

*Form(s) and Form number(s):* Incident Reporting Form, Form F07–02b.

*OMB Control Number:* 0917–0041.

*Need and Use of Information*

*Collection:* This information collection activity provides a means for federal employees, Tribal employees, contractors, and other non-federal employees to report IHS information technology (IT) security and privacy incidents. This information collection has three purposes: To notify the CSIRT of an incident, provide updates about an open incident, and indicate resolution of an existing incident. The information collection furthers the IHS’s ability to use secure IT, to enhance response time to IT incidents, and to maintain the agency’s healthcare information security posture. This information collection also allows IHS to process privacy incidents and breaches within the IHS, in keeping with internal and external requirements.

*Members of Affected Public:* Federal employees, Tribal employees, contractors, and other non-federal employees accessing IHS IT systems.

*Status of the Proposed Information Collection:* Extension request.

*Type of Respondents:* Individuals.

*The table below provides:* Types of data collection instruments, estimation of the number of respondents, number of responses per respondent, annual number of responses, average burden hour per response, and total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Annual number of responses	Average burden hour per response*	Total annual burden hours
IHS Federal and Non-Federal Staff .....	1700	1	1700	15/60	425
Total .....	1700	1	1700	15/60	425

\*For ease of understanding, the average burden per response is 15 minutes. There are no direct costs to respondents to report.

*Requests for Comments:* Your written comments and/or suggestions are invited on one or more of the following points:

(a) whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Elizabeth A. Fowler,**

*Acting Director, Indian Health Service.*

[FR Doc. 2022–09055 Filed 4–27–22; 8:45 am]

**BILLING CODE 4165–16–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and

development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**FOR FURTHER INFORMATION CONTACT:**

Chris Kornak at 240-627-3705 or [Chris.Kornak@nih.gov](mailto:Chris.Kornak@nih.gov). Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301-496-2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

**SUPPLEMENTARY INFORMATION:**

Technology description follows:

**Replication-Competent Adenovirus Type-4 HIV Env Vaccines and Their Use**

*Description of Technology:* National Institute of Allergy and Infectious Diseases (NIAID), International AIDS Vaccine Initiative (IAVI), Emergent, and Scripps have developed two recombinant adenovirus type 4 (Ad4) vector-based vaccine candidates. These replicating Ad4 vector-based candidates have shown improved activity against tier 2 HIV-1 isolates in experimental animals. Tier 2 isolates are among the most prevalent in infected populations. The two candidates, Ad4-Env150KN and Ad4-Env145NFL, incorporate novel design features based on Ad4-EnvC150 (1086c). Specifically, the truncation of the cytoplasmic tail of Env increases cell surface expression and has resulted in improved antigenicity from both candidates.

Additionally, the upper respiratory tract administration offers a way to bypass pre-existing Ad4 immunity in most people. Furthermore, unlike non-replicating vectors, these vaccines may evoke a durable immune response.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

*Potential Commercial Applications*

- Prophylaxis against HIV-1.

*Competitive Advantages*

- Replicating vector may invoke durable immunity against HIV-1.
- Potential for prophylactic use in high-risk populations.
- Upper-respiratory (intranasal) administration will bypass pre-existing Ad4 immunity in most people.

*Development Stage*

- Phase 1 Clinical Trial (NCT03878121).

*Inventors:* Mark Connors (NIAID), Jeff Alexander (Emergent), Lo Vang (Emergent), Richard Wyatt (Scripps and IAVI), and Javier Guenaga (IAVI).

*Publications:* Alexander J., Mendy J., Vang L., Avanzini J.B., Garduno F., et al. (2013) Pre-Clinical Development of a Recombinant, Replication-Competent Adenovirus Serotype 4 Vector Vaccine Expressing HIV-1 Envelope 1086 Clade C. PLOS ONE 8(12): e82380. <https://doi.org/10.1371/journal.pone.0082380>.

*Intellectual Property:* HHS Reference No. E-105-2020-0-PCT-01-PCT Application No. PCT/US21/45389 filed on 10 August 2021.

*Licensing Contact:* To license this technology, please contact Chris Kornak at 240-627-3705 or [Chris.Kornak@nih.gov](mailto:Chris.Kornak@nih.gov), and reference E-105-2020.

*Collaborative Research Opportunity:* The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. In particular, NIAID would be very interested in a partnership with an entity that has a complementary HIV vaccine technology. For collaboration opportunities, please contact Chris Kornak at 240-627-3705 or [Chris.Kornak@nih.gov](mailto:Chris.Kornak@nih.gov).

Dated: April 25, 2022.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2022-09158 Filed 4-27-22; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Office of the Secretary; Notice of Meeting**

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Interagency Pain Research Coordinating Committee.

The meeting will be open to the public via NIH Videocast <https://videocast.nih.gov/>. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Interagency Pain Research Coordinating Committee.

*Date:* June 7, 2022.

*Time:* 2:00 p.m. to 5:00 p.m. Eastern Daylight Time (EDT).

*Agenda:* The meeting will cover committee business items and IPRCC member updates. Items discussed will include updates on pain workforce enhancement, pain research, patient engagement, and diversity efforts.

*Webcast Live:* <https://videocast.nih.gov/>.

*Deadline:* Submission of intent to submit written/electronic statement for comments: Tuesday, May 31st, by 5:00 p.m. EDT.

*Place:* National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Linda L. Porter, Ph.D., Director, Office of Pain Policy and Planning, Office of the Director, National Institute of Neurological Disorders and Stroke, NIH, 31 Center Drive, Room 8A31, Bethesda, MD 20892, Phone: (301) 451-4460, Email: [Linda.Porter@nih.gov](mailto:Linda.Porter@nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Visit the IPRCC website for more information: <https://iprcc.nih.gov>. Agenda and any additional information for the meeting will be posted when available.

Dated: April 25, 2022.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2022-09140 Filed 4-27-22; 8:45 am]

**BILLING CODE 4140-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Prospective Grant of Exclusive License, Inter-Institutional Agreement-Institution Lead: Engineered Influenza Neuraminidase Antigens**

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Allergy and Infectious Diseases (NIAID), an institute of the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive, sublicensable patent license to the University of Washington, located in Seattle, State of Washington, U.S.A. in its rights to the inventions and the patent applications listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** Only written comments and/or applications for a license which are

received by the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases (NIAID) on or before May 13, 2022 will be considered.

**ADDRESSES:** Requests for copies of the patent applications, inquiries, and comments relating to the contemplated exclusive patent license should be directed to: Amy Petrik, Technology Transfer and Patent Specialist, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Suite 6D, MSC9804, Rockville, MD 20852-9804, phone number 240-627-3721, or [amy.petrik@nih.gov](mailto:amy.petrik@nih.gov).

**SUPPLEMENTARY INFORMATION:** The following and all continuing patents/patent applications thereof are the intellectual property to be licensed under the prospective agreement to the University of Washington: United States Provisional Patent Application Number 62/986,295, filed March 6, 2020, entitled “Engineered Influenza Neuraminidase Antigens” (HHS Reference No. E-052-2021-0-US-01) and Patent Cooperation Treaty (PCT) Patent Application Number PCT/US2021/020804, filed March 4, 2021, entitled “Engineered Influenza Neuraminidase Antigens” (HHS Reference No. E-052-2021-0-PCT-02).

The patent rights in these inventions have been assigned to the University of Washington and Government of the United States of America as represented by the Secretary, Department of Health & Human Services.

The prospective patent license will be for the purpose of consolidating the patent rights to the University of Washington, the co-owners of said rights, for commercial development and marketing.

Consolidation of these co-owned rights is intended to expedite development of the invention, consistent with the goals of the Bayh-Dole Act codified as 35 U.S.C. 200-212.

The prospective inter-institutional agreement may include an exclusive license for NIAID's rights in these jointly owned patent applications. It will be sublicensable, and any sublicenses granted by the University of Washington will be subject to the provisions of 37 CFR part 401 and 404.

In the subject technology, researchers at NIAID and the University of Washington engineered the neuraminidase glycoprotein from the influenza virus to improve its properties as an antigen. The patent applications claim the mutations that the researchers introduced to stabilize the

neuraminidase protein in its closed conformation and use of the engineered protein in an influenza vaccine.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will include a share of the royalties from the licensing of this invention back to the NIAID, and may be granted unless within fifteen (15) days from the date of this published notice, NIAID receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

Complete license applications submitted in response to this Notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under *the Freedom of Information Act*, 5 U.S.C. 552.

Dated: April 25, 2022.

**Surekha Vathyam,**

*Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.*

[FR Doc. 2022-09156 Filed 4-27-22; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

[OMB Control Number 1653-0037]

#### Agency Information Collection Activities; Revision of a Currently Approved Collection: Notice to Student or Exchange Visitor

**AGENCY:** U.S. Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) invites the general public and other Federal agencies to comment on this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, this information collection notice is published in the

**Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted until June 27, 2022.

**ADDRESSES:** All submissions received must include the OMB Control Number 1653-0037 in the body of the correspondence, the agency name and Docket ID ICEB-2009-0004. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

(1) *Online.* Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number ICEB-2009-0004.

**FOR FURTHER INFORMATION CONTACT:** If you have questions related to this collection, call or email Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program email: [sevp@ice.dhs.gov](mailto:sevp@ice.dhs.gov), telephone: 703-603-3400. This is not a toll-free number. Program information can be found at <https://www.ice.gov/sevis/>.

#### SUPPLEMENTARY INFORMATION:

##### Comment

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

## Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I-515A; U.S. Immigration and Customs Enforcement.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households. When an academic student (F-1), vocational student (M-1), exchange visitor (J-1), or dependent (F-2, M-2 or J-2) is admitted to the United States as a nonimmigrant alien under section 101(a)(15) of the Immigration and Nationality Act (Act), he or she is required to have certain documentation. If the student or exchange visitor or dependent is missing documentation, he or she is provided with the Form I-515A, Notice to Student or Exchange Visitor. The Form I-515A provides a list of the documentation the student or exchange visitor or dependent will need to provide to the Department of Homeland Security (DHS), Student and Exchange Visitor Program (SEVP) office within 30 days of admission.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,459 responses at 25 minutes (.416 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 608 annual burden hours.

Dated: April 18, 2022.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2022-08727 Filed 4-27-22; 8:45 am]

BILLING CODE 9111-28-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[Docket No. FWS-R4-ES-2022-0048; FXES11130400000-223-FF04EF4000]

### Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Polk County, FL; Categorical Exclusion

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments and information.

**SUMMARY:** We, the Fish and Wildlife Service (Service), announce receipt of

an application from the Polk County Board of Commissioners (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink and blue-tailed mole skink incidental to the construction and operation of a fire rescue station in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this HCP qualifies as "low effect," categorically excluded under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

**DATES:** We must receive your written comments on or before May 31, 2022.

**ADDRESSES:** *Obtaining Documents:* You may obtain copies of the documents online in Docket No. FWS-R4-ES-2022-0048; at <https://www.regulations.gov>.

*Submitting Comments:* If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online:* <https://www.regulations.gov>.

Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2022-0048.

- *U.S. mail:* Public Comments

Processing, Attn: Docket No. FWS-R4-ES-2022-0048; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

#### FOR FURTHER INFORMATION CONTACT:

Alfredo Begazo, by U.S. mail (see **ADDRESSES**), or via phone at 772-469-4234. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** We, the Fish and Wildlife Service (Service), announce receipt of an application from the Polk County Board of Commissioners (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction and operation of a fire rescue station in Polk

County, Florida. We request public comment on the application, which includes the applicant's HCP, and on the Service's preliminary determination that this HCP qualifies as "low effect," categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

## Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 2.67 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction and operation of a fire rescue station on a 5-ac parcel in Section 21, Township 28 South, Range 28 East, Polk County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 5.34 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits prior to engaging in any phase of the project.

## Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

## Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project—including the construction of a building, driveway, parking space, green areas, storm water pond, and associated infrastructure (e.g., electric, water, and sewer lines)—would individually and cumulatively have a minor or negligible effect on the skinks and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and that the HCP is low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in (1) minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) minor or negligible effects on other environmental values or resources; and (3) impacts that, when considered together with the impacts of other past, present, and reasonable foreseeable similarly situated projects,

would not result in significant cumulative effects to environmental values or resources over time.

### Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 0034609 to the Polk County Board of Commissioners.

### Authority

The Service provides this notice under section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.305).

**Robert L. Carey,**

*Division Manager, Environmental Review,  
Florida Ecological Services Office.*

[FR Doc. 2022–09109 Filed 4–27–22; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

[GR22RB00TU77E00; OMB Control Number 1028–NEW]

### Agency Information Collection Activities; Values Mapping for Planning in Regional Ecosystems (VaMPIRE) Public Participatory GIS Mapping Application

**AGENCY:** Interior.

**ACTION:** Notice of Information Collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing a new information collection.

**DATES:** Interested persons are invited to submit comments on or before June 27, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to [gs-info\\_collections@usgs.gov](mailto:gs-info_collections@usgs.gov). Please reference OMB Control Number 1028–NEW in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Rudy Schuster by email at [schusterr@usgs.gov](mailto:schusterr@usgs.gov), or by telephone at 970–226–9165. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, nor are you required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Is this collection necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How might the USGS minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your

comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

**Abstract:** The USGS developed a Public Participatory GIS (PPGIS) mapping application to aid in gathering information from Bureau of Land Management (BLM) visitors about their values for public lands and waters for consideration during Federal planning, permitting, and management efforts. This tool is called the Values Mapping for Planning in Regional Ecosystems (VaMPIRE) PPGIS application. VaMPIRE is a partnership with the BLM and is designed to gather spatially referenced data on the values people attach to places and the activities they do on BLM lands. The spatially referenced data can be used to identify landscape values; how proposed management actions might affect use and value; where potential conflicts might occur; and high-performing areas where multiple values can co-exist. The mapping application incorporates a survey designed to assess behavioral changes by the public based on land use and explores if visitors would change locations, activities, or frequency of visits given possible land-use change scenarios. VaMPIRE also identifies if there is an overall change in the value received from public lands under specified management changes. Data will be collected entirely online by emailing a link to the application and survey to visitors who reserved BLM campgrounds or permits in certain locations where this data would be of interest for planning and management.

**Title of Collection:** Public Participatory GIS mapping application and visitor survey.

**OMB Control Number:** 1028–NEW.

**Form Number:** None.

**Type of Review:** New.

**Respondents/Affected Public:** Individuals (Visitors to Bureau of Land Management lands).

**Total Estimated Number of Annual Respondents:** 770.

**Total Estimated Number of Annual Responses:** 770.

**Estimated Completion Time per Response:** 15 minutes on average.

**Total Estimated Number of Annual Burden Hours:** 192 hours.

**Respondent's Obligation:** Voluntary.

**Frequency of Collection:** Respondents will provide information one time.

**Total Estimated Annual Nonhour Burden Cost:** None.

An agency may not conduct or sponsor, nor is a person required to

respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Adrienne Bartlewitz,**

*Rocky Mountain Region Chief of Staff, U.S. Geological Survey.*

[FR Doc. 2022–09101 Filed 4–27–22; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

[22XD4523WS; DS67010000;  
DWSNF0000.XD0000; DP67012; OMB  
Control Number 1093–NEW]

### Agency Information Collection Activities; Access and Consent Forms

**AGENCY:** Office of the Secretary, Office of the Chief Information Officer, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of the Chief Information Officer, Office of the Secretary, Department of the Interior are proposing to seek compliance for an information collection in use without approval.

**DATES:** Interested persons are invited to submit comments on or before June 27, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, or email her at [DOI\\_Privacy@ios.doi.gov](mailto:DOI_Privacy@ios.doi.gov). Please reference Office of Management and Budget (OMB) Control Number 1093–NEW in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, or email her at [DOI\\_Privacy@ios.doi.gov](mailto:DOI_Privacy@ios.doi.gov), or by telephone at 202–208–1605. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may

also view the ICR at <http://www.reginfo.gov/public/do/PRAMain>.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

- (1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;
- (2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

**Abstract:** The Department of the Interior (DOI) developed the DI–4016, Request for Individual Access to Records Protected under the Privacy Act, and DI–4017, Consent for

Disclosure of Records Protected under the Privacy Act, forms for individuals to submit requests for accessing, and consenting to the disclosure of, records protected under the Privacy Act of 1974, as amended, 5 U.S.C. 552a. The DI–4016, Request for Individual Access to Records Protected under the Privacy Act, form is used by individuals seeking access to their records and any information pertaining to them that are maintained in DOI's systems of records. The DI–4017, Consent for Disclosure of Records Protected under the Privacy Act, form provides written consent of the individual to whom the record pertains when disclosing records to another person or an agency. The Privacy Act provides that “the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction, may act on behalf of the individual.” Therefore, these forms may also be used by a parent or legal guardian.

These forms were based on the templates provided in the OMB Memorandum M–21–04, Modernizing Access to and Consent for Disclosure of Records Subject to the Privacy Act, issued on November 12, 2020, which implements the requirements of the Creating Advanced Streamlined Electronic Services for Constituents Act of 2019 (“CASES Act”). The CASES Act was issued in an effort to modernize the Privacy Act request process by requiring agencies to accept access and consent forms from individuals properly identity-proofed and authenticated remotely through a digital service option in addition to an agency's existing process. The CASES Act also requires the forms to be posted on the agency website's privacy program page and the website updated to include instructions on how individuals may submit requests digitally.

**Title of Collection:** Access and Consent Forms.

**OMB Control Number:** 1093–NEW.

**Form Number:** DI–4016 and DI–4017.

**Type of Review:** New, In use without OMB approval.

**Respondents/Affected Public:** Individuals or households.

**Total Estimated Number of Annual Respondents:** 1,325.

**Total Estimated Number of Annual Responses:** 1,325.

**Estimated Completion Time per Response:** 15 minutes.

**Total Estimated Number of Annual Burden Hours:** 331 hours.

**Respondent's Obligation:** Voluntary.

**Frequency of Collection:** Once.

*Total Estimated Annual Nonhour Burden Cost:* None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Jeffrey Parrillo,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–09058 Filed 4–27–22; 8:45 am]

**BILLING CODE 4334–63–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[21XLLAKA01000 L1440000.EQ0000.241A; AA–094281]

#### Notice of Realty Action: Proposed Non-Competitive Lease of Public Land in the Kusilvak (Formerly Wade Hampton) Census Area, Alaska

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The Bureau of Land Management (BLM), Anchorage Field Office, proposes to issue a non-competitive lease to Jonathan Penz (applicant) across 0.5-acres of public land in the Kusilvak Census Area, Alaska, for commercial purposes. The BLM Bering Sea-Western Interior Resource Management Plan, approved in January 2021, allows land use leases to be authorized on the subject parcel. The lease would be authorized pursuant to Section 302 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA), and processed in accordance with BLM regulations.

**DATES:** Submit written comments regarding this proposed lease by May 31, 2022.

**ADDRESSES:** Only written comments submitted by postal service or overnight mail will be considered as properly filed. Send comments to: Field Manager, BLM Anchorage Field Office, 4700 BLM Road, Anchorage, Alaska 99507. Electronic mail, facsimile, or telephone comments will not be considered properly filed.

**FOR FURTHER INFORMATION CONTACT:** Thomas Sparks, Associate Field Manager, BLM Anchorage Field Office, telephone: (907) 443–2177, email: [tsparks@blm.gov](mailto:tsparks@blm.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or

TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The subject parcel was developed by the applicant's late father, which was previously authorized under a BLM lease (AA–59715). The lease expired but has not been re-authorized. The applicant has been working cooperatively with the BLM to obtain a new authorization. The lease would allow for continued operations of a fuel-storage site at a rental rate of \$335 per year (subject to Fair Market Value increases). This current rental rate is based on the Small Use Fee Schedule for remote parcels of land in Alaska, dated July 28, 2020, which was determined by the Department of the Interior—Appraisal and Valuation Services.

The subject lease parcel is isolated from other BLM managed lands and is surrounded by lands previously transferred to the Russian Mission Native Corporation pursuant to the Alaska Native Claims Settlement Act of December 18, 1971. The lease is located approximately 4.6 miles from Russian Mission, Alaska, and is on Federals located within:

#### Seward Meridian, Alaska

T. 20 N., R.67 W.,  
Sec. 1, lot 9

The lease can be more particularly described as follows:

BEGINNING at Corner No. 1, at Latitude 61°51'13.25" North, Longitude 161°20'01.50" West, (WGS 84), not monumented, approximately 4.6 miles north of Russian Mission, Alaska; THENCE, North 12°48'28.28" East, a distance of 150.00 feet to Corner No. 2, not monumented; THENCE North 77°11'31.72" West, a distance of 150.00 feet to Corner No. 3, not monumented; THENCE South 12°48'28.28" West, a distance of 150.00 feet to Corner No. 4, not monumented; THENCE South 77°11'31.72" East, a distance of 150.00 feet to Corner No. 1, at the POINT OF BEGINNING, 0.5 acres, more or less. BASIS OF BEARING: The Bearings herein are referenced to the true meridian.

Information and documentation regarding the lease proposal, including the National Environmental Policy Act assessment, is available at the BLM Anchorage Field Office (see **ADDRESSES** section). The BLM will not make a final decision on the lease until all required analyses are completed. If authorized,

the lease would be subject to provisions of the FLPMA, all applicable regulations of the Secretary of the Interior, including but not limited to 43 CFR part 2920, and valid existing rights.

Interested persons may submit comments regarding the decision to issue a land lease and whether the BLM followed proper administrative procedures in reaching the establishment of a land lease interest. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Adverse comments will be treated as protests to the decision and will be reviewed by the BLM Alaska State Director, who may sustain, vacate, or modify the realty action. In the absence of any adverse comments, the decision will become effective May 31, 2022.

(Authority: 43 CFR 2920)

**Thomas Heinlein,**

*State Director (Acting).*

[FR Doc. 2022–09015 Filed 4–27–22; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLWYD09000, L51010000.ER0000, LVRWK21K2200, WYW190759]

#### Notice of Intent To Prepare an Environmental Impact Statement for the Dry Creek Trona Mine Project, Sweetwater County, Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Kemmerer Field Office intends to prepare an Environmental Impact Statement (EIS) for the proposed Dry Creek Trona Mine project in Sweetwater County, Wyoming, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the EIS. The BLM

requests comments concerning the scope of the analysis, potential alternatives, and identification of relevant information and studies. All comments must be received by May 31, 2022. The BLM will conduct a virtual public scoping meeting during the scoping period and will announce the meeting's date and other logistical information at least 15 days in advance through local media, newspapers, and the BLM website, <https://go.usa.gov/xehyU>. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

**ADDRESSES:** You may submit comments related to the Dry Creek Trona Mine EIS by any of the following methods:

- Website: <https://go.usa.gov/xehyU>.
- Email: [BLM\\_WY\\_Dry\\_Creek@blm.gov](mailto:BLM_WY_Dry_Creek@blm.gov).
- Mail: BLM Kemmerer Field Office, 430 North Highway 189, Kemmerer, WY 93101.

Documents pertinent to this proposal may be examined online at <https://go.usa.gov/xehyU> and at the Kemmerer Field Office.

**FOR FURTHER INFORMATION CONTACT:**

Kelly Lamborn, Project Manager, [klamborn@blm.gov](mailto:klamborn@blm.gov); telephone: (307) 828-4505; 430 North Highway 189, Kemmerer, WY 93101. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** In April 2020, Pacific Soda, LLC and Atlantic Soda, LLC (hereafter Pacific Soda and Atlantic Soda, respectively) submitted a project proposal to the BLM to construct mining facilities and employ solution mining technologies to mine trona beds 2,300 feet below the surface. The proposed project area is located south of Interstate 80 (I-80) and west of Wyoming State Highway 530, near the town of Green River, Wyoming, in the Known Sodium Leasing Area (KSLA). The KSLA is a geologic designation in the Green River Basin where developable trona deposits at least 4 feet thick are known to occur. Under the Proposed Action, facilities would include mine well fields, processing facilities, a co-generation plant, storage ponds, a landfill, transportation facilities, a water pipeline, and utility features.

The processing facilities, co-generation plant, storage ponds, and landfill are proposed. Groundwater wells would be drilled to provide water for the early phases of construction until a water pipeline from the Green River is fully constructed.

Pacific Soda and Atlantic Soda submitted an Application for Transportation and Utility Systems and Facilities on Federal Lands (Standard Form [SF] 299) to the BLM on November 5, 2020, for the project-related transportation and utility features, including a water supply pipeline, rail line, access road, and overhead powerline. Pacific Soda and Atlantic Soda submitted a second SF-299 application to the BLM on December 21, 2020, for a natural gas pipeline. These infrastructure features are proposed to cross a combination of private lands and BLM-managed lands. The SF-299 applications are included as part of the BLM's proposed action, and the impacts resulting from the associated linear features will be analyzed in the Draft EIS.

Pacific Soda and Atlantic Soda estimate that approximately 23.5 million tons of trona are in reserve on each section of land within the proposed project area, that mining would occur on each section for nine to ten years, and that mined trona would be refined to produce approximately 5.5 million metric tons of marketable soda ash per year. The proposed action (including all facilities, mining infrastructure, ancillary facilities, and transportation and utility features) would collectively impact approximately 3,330 acres of private land, 2,809 acres of BLM-managed land, and five acres of land managed by the U.S. Forest Service.

The BLM determined that the proposed action requires an EIS-level NEPA analysis. The preparation of an EIS will assist the BLM in the decision-making process through the identification, analysis, and public disclosure of potential impacts of the proposed action on the human environment, including (but not limited to) environmental, social, and economic impacts (40 CFR 1502.16). Aside from BLM and USFS managed lands, no federal or state managed lands would be disturbed by the proposed action. Additionally, the BLM is not aware of any other proposed activities in the Dry Creek Trona Mine Project area that would be considered, under NEPA, a connected action to the proposed action.

## Purpose and Need for the Proposed Action

The BLM's purpose for the action is to respond to proponents' proposed Plan of Operations to construct and operate trona mining facilities. If approved by the BLM, this would allow Pacific Soda and Atlantic Soda the opportunity to develop their valid existing leases on specific public lands within the proposed mining plan boundary as authorized by the Mineral Leasing Act of 1920 (as amended) (MLA) and FLPMA. Pacific Soda and Atlantic Soda would construct the mining facilities and transportation and utility features specified in the Plan of Operations and SF-299 applications for rights-of-way for linear infrastructure. The objective of Pacific Soda and Atlantic Soda would be to use these facilities and employ solution mining technologies to mine trona beds 2,300 feet below the surface and produce an estimated 5.5 million tons of marketable soda ash per year.

The need for the action is established by the BLM's responsibility under the MLA and FLPMA. Under these statutes, the BLM is required to respond to the project proposal and review the proposed mine plan and associated SF-299s to ensure that mining activities and construction of associated facilities do not cause unnecessary or undue degradation of public lands and are consistent with leasing stipulations and other requirements mandated in the BLM Kemmerer and Green River Resource Management Plans (RMPs), as well as other applicable federal, state, and local statutes and regulations.

## Summary of Expected Impacts

Preliminary expected impacts include potential impacts to sage grouse priority habitat, crucial big game habitat for antelope, cultural sites and areas of interest to Tribes, and ground water, as well as potential subsidence issues.

## Anticipated Permits and Authorizations

Agencies that could require permits for this project, in addition to the BLM, include the U. S. Army Corps of Engineers; State of Wyoming Department of Environmental Quality; Wyoming State Engineer's Office; Wyoming Department of Transportation; Wyoming Game and Fish Department; U.S. Fish and Wildlife Service; U.S. Forest Service; and Sweetwater County.

## Public Scoping Process

The purpose of public scoping is to identify relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for

developing an EIS. The BLM plans to hold one virtual meeting during the scoping period. The specific date and details of the scoping meeting will be announced at least 15 days in advance through the BLM website at <https://go.usa.gov/xehyU>.

#### **Request for Identification of Potential Issues, Alternatives, Information, and Analyses Relevant to the Proposed Action**

The BLM requests assistance with identifying potential alternatives to the proposed action to be considered. As alternatives should resolve a problem with the proposed action, please indicate the purpose of the suggested alternative. The BLM also requests the identification of potential impacts that should be analyzed. Impacts should be a result of the action; therefore, please identify the activity and the potential resulting impact that should be analyzed. Information have that would assist in the development of alternatives or analysis of resource issues is also helpful.

#### **Lead and Cooperating Agencies**

The BLM is the lead agency for this analysis. Cooperating agencies include: U.S. Forest Service; U. S. Army Corps of Engineers; Wyoming Department of Agriculture; Wyoming Department of Environmental Quality; Wyoming Game and Fish Department; Wyoming Governor's Office; Wyoming Office of Outdoor Recreation; Wyoming Office of State Lands and Investments; Wyoming State Engineer's Office; Wyoming State Historic Preservation Office; Wyoming State Parks, Historic Sites, and Trails; Wyoming Industrial Siting Commission; Lincoln County Commissioners; Lincoln County Conservation District; Sweetwater County Commissioners; Sweetwater County Conservation District; Uinta County Commissioners; Uinta County Conservation District; Town of Granger; and Town of Green River. Consulting parties include: Eastern Shoshone Tribe of the Wind River Reservation; Northern Arapaho Tribe; Ute Tribe of the Uintah and Ouray Reservation; and Shoshone-Bannock Tribes of the Fort Hall Reservation.

#### **Nature of Decision To Be Made**

Following a thorough NEPA analysis, the BLM's decision will include whether to approve the Plan of Operations and SF-299 applications (for transportation and utility features) and, if approved, whether modifications and any additional mitigation measures are required to comply with the FLPMA mandate to prevent unnecessary or

undue degradation and conform to leasing stipulations specified in the BLM Kemmerer and Green River RMPs.

#### **Additional Information**

The BLM will identify, analyze, and consider mitigation to address the reasonably foreseeable impacts to resources from the proposed action and all reasonable alternatives and, in accordance with 40 CFR 1502.14(f), include appropriate mitigation measures not already included in the proposed action or alternatives. Mitigation may include avoidance, minimization, rectification, reduction or elimination over time, and compensation; and may be considered at multiple scales, including the landscape scale.

The BLM will utilize and coordinate the NEPA process to help support procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3), including public involvement requirements of Section 106. The information about historic and cultural resources and threatened and endangered species within the area potentially affected by the proposed plan will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Indian Tribes on a government-to-government basis in accordance with Executive Order 13175, BLM MS 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, state, and local agencies, along with Tribes and other stakeholders that may be interested in or affected by the proposed project that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1501.7.)

**Melissa Towers,**

*Acting District Manager, BLM High Desert District Office.*

[FR Doc. 2022-09088 Filed 4-27-22; 8:45 am]

**BILLING CODE 4310-DN-P**

## **DEPARTMENT OF THE INTERIOR**

### **National Park Service**

**[NPS-WASO-NRNL-33609;  
PPWOCRADP2, PCU00RP14.R50000]**

### **National Historic Landmarks Committee of the National Park System Advisory Board Meeting**

**AGENCY:** National Park Service,  
Department of the Interior.

**ACTION:** Meeting notice.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Historic Landmarks Committee (Committee) of the National Park System Advisory Board (Board) will meet as indicated below.

**DATES:** The virtual meeting will be held on Wednesday, May 11, 2022, and Thursday, May 12, 2022, from 10:00 a.m. to 4:00 p.m. (EST).

**ADDRESSES:** The meeting will be held virtually at the date and time noted above and instructions and access information will be provided online at <https://www.nps.gov/subjects/nationalhistoriclandmarks/nhl-committee-meetings.htm>. Please check the program website at <https://www.nps.gov/subjects/nationalhistoriclandmarks/index.htm> for the most current meeting information.

**FOR FURTHER INFORMATION CONTACT:** Dr. Lisa Davidson, Program Manager, National Historic Landmarks Program, National Park Service, 1849 C Street NW, Mail Stop 7228, Washington, DC 20240, or email [Lisa\\_Davidson@nps.gov](mailto:Lisa_Davidson@nps.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting of the Committee is to evaluate nominations of historic properties in order to advise the Board of the qualifications of each property being proposed for National

Historic Landmark designation, and to make recommendations regarding the possible designation of those properties as National Historic Landmarks to the Board at a future meeting. The Committee also makes recommendations to the Board regarding amendments to existing designations and proposals for withdrawal of designation. The members of the Committee are:

Mr. Joseph Emert, Chair  
 Dr. David G. Anderson  
 Dr. Ethan Carr  
 Dr. Julio Cesar Capó  
 Dr. Cynthia G. Falk  
 Dr. Richard Longstreth  
 Dr. Alexandra M. Lord  
 Dr. Vergil E. Noble  
 Dr. Toni M. Prawl  
 Mr. Adam Smith  
 Dr. Sharita Jacobs Thompson  
 Dr. Carroll Van West  
 Dr. Richard Guy Wilson

The meeting will be open to the public. Pursuant to 36 CFR part 65, any member of the public may file, for consideration by the Committee, written comments concerning the National Historic Landmark nominations, amendments to existing designations, or proposals for withdrawal of designation.

Comments should be submitted to Sherry A. Frear, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, 1849 C Street NW, Mail Stop 7228, Washington, DC 20240, or email [nhl\\_info@nps.gov](mailto:nhl_info@nps.gov). All comments received will be provided to the Committee and the Board.

*Purpose of the Meeting:* The Board and its Committee may consider the following nominations:

#### California

WAYFARERS CHAPEL, Rancho Palos Verdes, CA

#### Colorado

TEMPLE AARON, Trinidad, CO

#### District of Columbia

NATIONAL ARCHIVES BUILDING, Washington, DC

#### Illinois

SAM AND RUTH VAN SICKLE FORD HOUSE, Aurora, IL

#### Massachusetts

SAMPSON-WHITE JOINER SHOP, Duxbury, MA

#### Tennessee

FORT ARMISTEAD, Coker Creek, Monroe County, TN

#### Wyoming

QUEBEC 01 LAUNCH CONTROL FACILITY, Laramie County, WY

Proposed Amendments to Existing Designations:

#### California

JOHN MUIR HOME (updated documentation), Martinez, Contra Costa County, CA

#### Illinois

RIVERSIDE HISTORIC DISTRICT (updated documentation), Riverside, IL

#### Pennsylvania

HISTORIC MORAVIAN BETHLEHEM HISTORIC DISTRICT (updated documentation), Bethlehem, PA

#### Tennessee

HERMITAGE HOTEL (updated documentation), Nashville, TN

#### Virginia

WATERFORD HISTORIC DISTRICT (updated documentation), Loudoun County, VA

Proposed Withdrawal of Existing Designations:

#### Illinois

GOLDENROD SHOWBOAT, Kampsville, Calhoun County, IL

#### Louisiana

DELUGE (FIRE FIGHTING TUG), New Orleans, LA

#### Michigan

STE. CLAIRE (PASSENGER STEAMBOAT), Wayne County, MI

*Public Disclosure of Comments:*  
 Before including your address, phone

number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

*Authority:* 36 CFR 65.5.

**Joshua Winchell,**

*Acting Chief, Office of Policy.*

[FR Doc. 2022–09136 Filed 4–27–22; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

[NPS–WASO–NAGPRA–NPS0033786; PPWOCRADN0–PCU00RP14.R50000]

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University Museum, University of Arkansas, Fayetteville, AR; Correction

**AGENCY:** National Park Service, Interior.  
**ACTION:** Notice; correction.

**SUMMARY:** The University of Arkansas Museum has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on August 15, 2000. This notice corrects the minimum number of individuals and number of associated funerary objects. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the University of Arkansas Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

**DATES:** Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the University of Arkansas Museum at the address in this notice by May 31, 2022.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary Suter, University of Arkansas Museum, Biomass 125, Fayetteville, AR 72701, telephone (479) 575–3456, email [msuter@uark.edu](mailto:msuter@uark.edu).

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the University of Arkansas Museum, Fayetteville, AR. The human remains and associated funerary objects were removed from the Bradley Site, Crittenden County, AR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the minimum number of individuals and associated funerary objects published in a Notice of Inventory Completion in the **Federal Register** (65 FR 49835, August 15, 2000). The correction is being made to include additional human remains and associated funerary objects that were found during a re-inventory of the collection. Transfer of control of the items in this correction notice has not occurred.

#### Correction

In the **Federal Register** (65 FR 49835, August 15, 2000), column 1, paragraph 4 is corrected by substituting the following paragraph:

In 1932, human remains representing a minimum of 29 individuals were recovered from the Bradley Site (3CT7), Crittenden County, AR, during excavations conducted by the University Museum. No known individuals were identified. The 145 associated funerary objects are composed of 134 objects present in the Museum collections and 11 objects that are currently missing. The 134 associated funerary objects are one deer antler tine, one lot of ash, one shell bead, nine ceramic bottles, eight ceramic bowls, two bone die, one discoidal, two ear plugs, two effigy bottles, six effigy bowls, one effigy jar, one gorget, three ceramic jars, one deer mandible, 94 body sherds, one rim sherd. The University of Arkansas Museum continues to look for the missing 11 associated funerary objects, which are one bone awl, four ceramic bottles, three ceramic bowls, one effigy bowl, one bone needle, and one ceramic sherd.

In the **Federal Register** (65 FR 49835, August 15, 2000), column 2, paragraph

2, sentences 1 and 2 are corrected by substituting the following sentences:

Based on the above-mentioned information, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of a minimum of 29 individuals of Native American ancestry. Officials of the University Museum, University of Arkansas also have determined that, pursuant to 43 CFR 10.2(d)(2), the 145 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

#### Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Mary Suter, University of Arkansas Museum, Biomass 125, Fayetteville, AR 72701, telephone (479) 575–3456, email [msuter@uark.edu](mailto:msuter@uark.edu), by May 31, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Quapaw Nation [previously listed as The Quapaw Tribe of Indians] may proceed.

The University of Arkansas Museum is responsible for notifying the Quapaw Nation [previously listed as The Quapaw Tribe of Indians] and the Tunica-Biloxi Indian Tribe that this notice has been published.

Dated: April 20, 2022.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2022–09159 Filed 4–27–22; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–588]

### Foreign Trade Zones (FTZs): Effects of FTZ Policies and Practices on U.S. Firms Operating in U.S. FTZs and Under Similar Programs in Canada and Mexico; Proposed Information Collection; Comment Request; Foreign Trade Zones Questionnaire

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice of request for public comments regarding a proposed data collection in Commission Investigation No. 332–588.

**SUMMARY:** In accordance with the provisions of the Paperwork Reduction Act of 1995, the U.S. International Trade Commission (Commission or USITC) hereby gives notice that it plans to submit a request for approval of a questionnaire to the Office of Management and Budget (OMB) for review and requests public comment on its draft proposed collection.

**DATES:** To assure that the Commission will consider your comments, it must receive them no later than 60 days after publication of this notice in the **Federal Register**.

**ADDRESSES:** All Commission offices are in the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Due to the COVID–19 pandemic, the Commission's building is currently closed to the public. Once the building reopens, persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

**FOR FURTHER INFORMATION CONTACT:** The project leaders for this investigation are Ann Marie Carton, Fernando Gracia, and Lin Jones. Please direct all written comments Ann Marie Carton at 202–205–2781 or via email at [FTZ.investigation@usitc.gov](mailto:FTZ.investigation@usitc.gov).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. General information concerning the Commission may be obtained by accessing its internet address (<https://www.usitc.gov>). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The information requested by the questionnaire is for use by the Commission in connection with Investigation No. 332–588, *Foreign Trade Zones (FTZs): Effects of FTZ Policies and Practices on U.S. Firms Operating in U.S. FTZs and Under Similar Programs in Canada and Mexico*, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation and report were requested by the United States Trade Representative (USTR) on December 14, 2021. This investigation was initiated on January 26, 2022, and the notice of investigation was published in the **Federal Register** on January 31, 2022 (87 FR 4914). The Commission will deliver its report to USTR by April 14, 2023. As stated in the notice of investigation, the USTR requested that the Commission's report include

detailed data and other information on firms operating in FTZs in the United States, and under similar programs in Canada, and Mexico. Such information is not available in the requested specificity from governmental and other public sources. The Commission indicated in its notice of investigation that it will need to obtain much of such data and information through a survey. The survey will assist the Commission in developing, as requested, an overview of economic activity and policies and practices in U.S. FTZs and under similar programs in Canada and Mexico, and the effects of those policies and practices on the cost competitiveness of products of firms operating in these programs. Similar programs in Canada include the Duties Relief Program, Drawback Program, Export Distribution Center Program, and Exporters of Processing Services Program. Similar programs in Mexico include Industria Manufacturera, Maquiladora y de Servicios de Exportación (IMMEX), Value Added Tax (VAT)/Special Tax on Production and Services (IEPS) Certification, Programa de Promoción Sectorial (PROSEC), Rule 8 (Regla 8), and Operadores Económicos Autorizados (OEA) (previously Nuevo Esquema de Empresas Certificadas (NEEC)).

**Summary of Proposal:** The Commission intends to submit the following draft information collection plan to OMB and invites public comment.

- (1) *Number of forms submitted:* 1.
- (2) *Title of form:* Foreign Trade Zones Questionnaire.
- (3) *Type of request:* New.
- (4) *Frequency of use:* Industry questionnaire, single data gathering, scheduled for 2022.
- (5) *Description of respondents:* U.S. firms granted authority, and exercising this authority, to produce in a U.S. FTZ.
- (6) *Estimated number of respondents:* 400.
- (7) *Estimated total number of hours to complete the questionnaire per respondent:* 20 hours.
- (8) Information obtained from the questionnaire that qualifies as confidential business information will be so treated by the Commission and not

disclosed in a manner that would reveal the individual operations of a business.

**Method of Collection:** Respondents will be sent a letter with a link and individual code for accessing the online form. Once the online form is complete, respondents will be directed to submit the form by selecting a submit button.

**Request for Comments:** Comments are invited on (1) the draft questionnaire; (2) whether the proposed collection of information is necessary; (3) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (4) ways to enhance the quality, utility, and clarity of the information to be collected; and (5) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The draft questionnaire and other supplementary documents may be downloaded from the USITC website at <https://www.usitc.gov/ftzinvestigation>.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection; they will also become a matter of public record. As such proprietary or confidential business information should not be submitted as part of comments on the draft questionnaire.

By order of the Commission.

Issued: April 25, 2022.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2022-09115 Filed 4-27-22; 8:45 am]

**BILLING CODE 7020-02-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-1000]

#### Importer of Controlled Substances Application: Lipomed

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Lipomed has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before May 31, 2022. Such persons may also file a written request for a hearing on the application on or before May 31, 2022.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on February 9, 2022, 150 Cambridgepark Drive, Suite 705, Cambridge, Massachusetts 02140, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3-FMC) .....	1233	I
Cathinone .....	1235	I
Methcathinone .....	1237	I
4-Fluoro-N-methylcathinone (4-FMC) .....	1238	I
Pentedrone ( $\alpha$ -methylaminovalerophenone) .....	1246	I
Mephedrone (4-Methyl-N-methylcathinone) .....	1248	I
4-Methyl-N-ethylcathinone (4-MEC) .....	1249	I
Naphyrone .....	1258	I
N-Ethylamphetamine .....	1475	I

Controlled substance	Drug code	Schedule
N,N-Dimethylamphetamine	1480	I
Fenethylamine	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR-144 and XLR11 ([1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone)	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB-FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB-AMB, MMB-FUBINACA, AMB-FUBINACA (2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7021	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
5-AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7025	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB-CHMINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F-AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F-ADB; 5F-MDMB-PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
Ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido) 3,3-dimethylbutanoate)	7036	I
MDMB-CHMICA, MMB-CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7042	I
MMB-CHMICA, AMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate)	7044	I
N-(Adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide)	7047	I
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	7048	I
5F-APINACA, 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I
1-(5-Fluoropentyl)-1H-indazole-3-carboxamide	7083	I
5F-CUMYL-P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4-CN-CUMYL-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, SGT-78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboximide)	7089	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7221	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-methyl-alpha-ethylaminopentiophenone (4-MEAP)	7245	I
N-ethylhexedrone	7246	I
Alpha-ethyltryptamine	7249	I
l-bogaine	7260	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol])	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol])	7298	I
Lysergic acid diethylamide	7315	I
2,5-Dimethoxy-4-(n-propylthiophenethylamine (2C-T-7)	7348	I
Marihuana extract	7350	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Parahexyl	7374	I
Mescaline	7381	I
2C-T-2, (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I

Controlled substance	Drug code	Schedule
5-Methoxy-N,N-dimethyltryptamine .....	7431	I
Alpha-methyltryptamine .....	7432	I
Bufotenine .....	7433	I
Diethyltryptamine .....	7434	I
Dimethyltryptamine .....	7435	I
Psilocybin .....	7437	I
Psilocyn .....	7438	I
5-Methoxy-N,N-diisopropyltryptamine .....	7439	I
4-chloro-alpha-pyrrolidinovalerophenone (4-chloro-a-PVP) .....	7443	I
N-Ethyl-1-phenylcyclohexylamine .....	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine .....	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine .....	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine .....	7473	I
N-Ethyl-3-piperidyl benzilate .....	7482	I
N-Methyl-3-piperidyl benzilate .....	7484	I
N-Benzylpiperazine .....	7493	I
4-MePPP (4-Methyl-alpha-pyrrolidinopropiophenone) .....	7498	I
2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine) .....	7508	I
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine) .....	7509	I
2C-H (2-(2,5-Dimethoxyphenyl) ethanamine) .....	7517	I
2C-I (2-(4-iodo-2,5-dimethoxyphenyl) ethanamine) .....	7518	I
2C-C (2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine) .....	7519	I
2C-N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine) .....	7521	I
2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine) .....	7524	I
2C-T-4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine) .....	7532	I
MDPV (3,4-Methylenedioxypropylvalerone) .....	7535	I
25B-NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine) .....	7536	I
25C-NBOMe (2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine) .....	7537	I
25I-NBOMe (2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine) .....	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone) .....	7540	I
Butylone .....	7541	I
Pentylone .....	7542	I
N-Ethylpentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one) .....	7543	I
α-PHP, alpha-Pyrrolidinohexanophenone .....	7544	I
α-PVP (alpha-pyrrolidinopentiophenone) .....	7545	I
α-PBP (alpha-pyrrolidinobutiophenone) .....	7546	I
PV8, alpha-Pyrrolidinoheptaphenone .....	7548	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole) .....	7694	I
Norfentanyl .....	8366	I
Acetyldihydrocodeine .....	9051	I
Benzylmorphine .....	9052	I
Codeine-N-oxide .....	9053	I
Cyprenorphine .....	9054	I
Desomorphine .....	9055	I
Etorphine (except HCl) .....	9056	I
Codeine methylbromide .....	9070	I
Dihydromorphine .....	9145	I
Difenoxin .....	9168	I
Heroin .....	9200	I
Hydromorfinol .....	9301	I
Methyl-desorphine .....	9302	I
Methyldihydromorphine .....	9304	I
Morphine methylbromide .....	9305	I
Morphine methylsulfonate .....	9306	I
Morphine-N-oxide .....	9307	I
Myrophine .....	9308	I
Nicocodeine .....	9309	I
Nicomorphine .....	9312	I
Normorphine .....	9313	I
Pholcodine .....	9314	I
Thebacon .....	9315	I
Acetorphine .....	9319	I
Drotebanol .....	9335	I
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide) .....	9547	I
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide)) .....	9551	I
MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine)) .....	9560	I
Acetylmethadol .....	9601	I
Allylprodine .....	9602	I
Alphacetylmethadol except levo-alphacetylmethadol .....	9603	I
Alphameprodine .....	9604	I
Alphamethadol .....	9605	I
Benzethidine .....	9606	I
Betacetylmethadol .....	9607	I
Betameprodine .....	9608	I

Controlled substance	Drug code	Schedule
Betamethadol .....	9609	I
Betaprodine .....	9611	I
Clonitazene .....	9612	I
Dextromoramide .....	9613	I
Diampromide .....	9615	I
Diethylthiambutene .....	9616	I
Dimenoxadol .....	9617	I
Dimepheptanol .....	9618	I
Dimethylthiambutene .....	9619	I
Dioxaphetyl butyrate .....	9621	I
Dipipanone .....	9622	I
Ethylmethylthiambutene .....	9623	I
Etonitazene .....	9624	I
Etoxidine .....	9625	I
Furethidine .....	9626	I
Hydroxypethidine .....	9627	I
Ketobemidone .....	9628	I
Levomoramide .....	9629	I
Levophenacymorphan .....	9631	I
Morpheridine .....	9632	I
Noracymethadol .....	9633	I
Norlevorphanol .....	9634	I
Normethadone .....	9635	I
Norpipanone .....	9636	I
Phenadoxone .....	9637	I
Phenampromide .....	9638	I
Phenoperidine .....	9641	I
Piritramide .....	9642	I
Proheptazine .....	9643	I
Properidine .....	9644	I
Racemoramide .....	9645	I
Trimeperidine .....	9646	I
Phenomorphane .....	9647	I
Propiram .....	9649	I
1-Methyl-4-phenyl-4-propionoxypiperidine .....	9661	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine .....	9663	I
Tilidine .....	9750	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide) .....	9811	I
Para-Fluorofentanyl .....	9812	I
3-Methylfentanyl .....	9813	I
Alpha-Methylfentanyl .....	9814	I
Acetyl-alpha-methylfentanyl .....	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide .....	9816	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide) .....	9821	I
Butyryl Fentanyl .....	9822	I
Para-fluorobutyryl fentanyl .....	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide) .....	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide .....	9825	I
Para-chloroisobutyryl fentanyl .....	9826	I
Isobutyryl fentanyl .....	9827	I
Beta-hydroxyfentanyl .....	9830	I
Beta-hydroxy-3-methylfentanyl .....	9831	I
Alpha-methylthiofentanyl .....	9832	I
3-Methylthiofentanyl .....	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide) .....	9834	I
Thiofentanyl .....	9835	I
Beta-hydroxythiofentanyl .....	9836	I
Para-methoxybutyryl fentanyl .....	9837	I
Ocfentanil .....	9838	I
Valeryl fentanyl .....	9840	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide) .....	9843	I
Cyclopropyl Fentanyl .....	9845	I
Cyclopentyl fentanyl .....	9847	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h) .....	9850	I
Amphetamine .....	1100	II
Methamphetamine .....	1105	II
Lisdexamfetamine .....	1205	II
Phenmetrazine .....	1631	II
Methylphenidate .....	1724	II
Amobarbital .....	2125	II
Pentobarbital .....	2270	II
Secobarbital .....	2315	II
Glutethimide .....	2550	II
Dronabinol in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration (FDA).	7365	II

Controlled substance	Drug code	Schedule
Nabilone .....	7379	II
1-Phenylcyclohexylamine .....	7460	II
Phencyclidine .....	7471	II
ANPP (4-Anilino-N-phenethyl-4-piperidine) .....	8333	II
Phenylacetone .....	8501	II
1-Piperidinocyclohexanecarbonitrile .....	8603	II
Alphaprodine .....	9010	II
Anileridine .....	9020	II
Cocaine .....	9041	II
Codeine .....	9050	II
Etorphine HCl .....	9059	II
Dihydrocodeine .....	9120	II
Oxycodone .....	9143	II
Hydromorphone .....	9150	II
Diphenoxylate .....	9170	II
Ecgonine .....	9180	II
Ethylmorphine .....	9190	II
Hydrocodone .....	9193	II
Levomethorphan .....	9210	II
Levorphanol .....	9220	II
Isomethadone .....	9226	II
Meperidine .....	9230	II
Meperidine-intermediate-A .....	9232	II
Meperidine intermediate-B .....	9233	II
Meperidine intermediate-C .....	9234	II
Metazocine .....	9240	II
Methadone .....	9250	II
Methadone intermediate .....	9254	II
Metopon .....	9260	II
Dextropropoxyphene, bulk (non-dosage forms) .....	9273	II
Morphine .....	9300	II
Oripavine .....	9330	II
Thebaine .....	9333	II
Dihydroetorphine .....	9334	II
Levo-alphaacetylmethadol .....	9648	II
Oxymorphone .....	9652	II
Noroxymorphone .....	9668	II
Phenazocine .....	9715	II
Thiafentanil .....	9729	II
Piminodine .....	9730	II
Racemethorphan .....	9732	II
Racemorphan .....	9733	II
Alfentanil .....	9737	II
Remifentanil .....	9739	II
Sufentanil .....	9740	II
Carfentanil .....	9743	II
Tapentadol .....	9780	II
Bezitramide .....	9800	II
Fentanyl .....	9801	II
Moramide-intermediate .....	9802	II

The company plans to import analytical reference standards for distribution to its customers for research and analytics purposes. Placement of these drug codes onto the company's registration does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized in 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-

approved finished dosage forms for commercial sale.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022-09062 Filed 4-27-22; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-995]

#### Bulk Manufacturer of Controlled Substances Application: SpecGx LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** SpecGx LLC has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 27, 2022. Such persons may also file a written request for a hearing on the application on or before June 27, 2022.

**ADDRESSES:** The Drug Enforcement Administration requires that all

comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission

of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.”

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on January 26, 2022, SpecGx LLC, 3600 North Second Street, Saint Louis, Missouri 63147–3457, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid .....	2010	I
Tetrahydrocannabinols .....	7370	I
Codeine-N-oxide .....	9053	I
Noroxymorphone .....	9145	I
Difenoxin .....	9168	I
Morphine-N-oxide .....	9307	I
Normorphine .....	9313	I
Alphamethadol .....	9605	I
Betamethadol .....	9609	I
Norlevorphanol .....	9634	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide) .....	9821	I
Butyryl Fentanyl .....	9822	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h) .....	9850	I
Amphetamine .....	1100	II
Methamphetamine .....	1105	II
Lisdexamfetamine .....	1205	II
Methylphenidate .....	1724	II
Nabilone .....	7379	II
ANPP (4-Anilino-N-phenethyl-4-piperidine) .....	8333	II
Phenylacetone .....	8501	II
Codeine .....	9050	II
Dihydrocodeine .....	9120	II
Oxycodone .....	9143	II
Hydromorphone .....	9150	II
Diphenoxylate .....	9170	II
Ecgonine .....	9180	II
Hydrocodone .....	9193	II
Levorphanol .....	9220	II
Meperidine .....	9230	II
Meperidine intermediate-A .....	9232	II
Meperidine intermediate-B .....	9233	II
Meperidine intermediate-C .....	9234	II
Methadone .....	9250	II
Methadone intermediate .....	9254	II
Dextropropoxyphene, bulk (non-dosage forms) .....	9273	II
Morphine .....	9300	II
Oripavine .....	9330	II
Thebaine .....	9333	II
Opium tincture .....	9630	II
Opium, powdered .....	9639	II
Oxymorphone .....	9652	II
Noroxymorphone .....	9668	II
Alfentanil .....	9737	II
Remifentanil .....	9739	II
Sufentanil .....	9740	II
Tapentadol .....	9780	II
Fentanyl .....	9801	II

The company plans to bulk manufacture the listed controlled substances for the internal use intermediates or for sale to its customers. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture this drug as synthetic. No other activities for

these drug codes are authorized for this registration.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022–09035 Filed 4–27–22; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA–999]

### Importer of Controlled Substances

**Application: Royal Emerald  
Pharmaceuticals Research and  
Development**

**AGENCY:** Drug Enforcement  
Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Royal Emerald Pharmaceuticals has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 31, 2022. Such persons may also file a written request for a hearing on the application on or before May 31, 2022.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this

is notice that on March 25, 2022, Royal Pharmaceuticals Research and Development, 14011 Palm Drive, Desert Hot Springs, California 92240, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Marihuana Extract ..	7350	I
Marihuana .....	7360	I
Tetrahydrocannabinols.	7370	I

The company plans to import Marihuana seeds and immature Marihuana plants in the form of Active Pharmaceutical Ingredients (API) and botanical raw materials for DEA-approved legitimate scientific medical research and/or industrial purposes.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022-09061 Filed 4-27-22; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-996]

#### Importer of Controlled Substances Application: VHGs Labs DBA LGC Standards

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** VHGs Labs DBA LGC Standards has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 31, 2022. Such persons may also file a written request for a hearing on the application on or before May 31, 2022.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on February 18, 2022, VHGs Labs DBA LGC Standards, 3 Perimeter Road, Manchester, New Hampshire 03103, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cathinone .....	1235	I
Methcathinone .....	1237	I
Naphyrone .....	1258	I
N-Ethylamphetamine .....	1475	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) .....	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) .....	7008	I
APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide .....	7048	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) .....	7081	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole) .....	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole) .....	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) .....	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone .....	7144	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) .....	7203	I
llogaine .....	7260	I

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide .....	7315	I
Marihuana Extract .....	7350	I
Marihuana .....	7360	I
Tetrahydrocannabinols .....	7370	I
Mescaline .....	7381	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole) .....	7398	I
3,4-Methylenedioxymethamphetamine .....	7405	I
5-Methoxy-N-N-dimethyltryptamine .....	7431	I
Psilocyn .....	7438	I
4-Methyl-alpha-pyrrolidinopropiophenone (4-MePPP) .....	7498	I
MDPV (3,4-Methylenedioxypropylvalerone) .....	7535	I
Methylone (3,4-Methylenedioxy-N-methylcathinone) .....	7540	I
Butylone .....	7541	I
Pentylone .....	7542	I
Codeine-N-oxide .....	9053	I
Desomorphine .....	9055	I
Dihydromorphine .....	9145	I
Heroin .....	9200	I
Morphine-N-oxide .....	9307	I
Normorphine .....	9313	I
Tilidine .....	9750	I
Alpha-methylfentanyl .....	9814	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide) .....	9821	I
Fentanyl-related substance .....	9850	I
Methamphetamine .....	1105	II
Phenmetrazine .....	1631	II
Methylphenidate .....	1724	II
Amobarbital .....	2125	II
Pentobarbital .....	2270	II
Secobarbital .....	2315	II
Glutethimide .....	2550	II
Phencyclidine .....	7471	II
4-Anilino-N-phenethyl-4-piperidine (ANPP) .....	8333	II
Norfentanyl .....	8366	II
Phenylacetone .....	8501	II
Codeine .....	9050	II
Dihydrocodeine .....	9120	II
Oxycodone .....	9143	II
Hydromorphone .....	9150	II
Diphenoxylate .....	9170	II
Ecgonine .....	9180	II
Ethylmorphine .....	9190	II
Hydrocodone .....	9193	II
Levorphanol .....	9220	II
Meperidine .....	9230	II
Meperidine intermediate-A .....	9232	II
Meperidine intermediate-B .....	9233	II
Meperidine intermediate-C .....	9234	II
Methadone intermediate .....	9254	II
Dextropropoxyphene, bulk (non-dosage forms) .....	9273	II
Morphine .....	9300	II
Thebaine .....	9333	II
14-Hydroxymorphine .....	9665	II
Noroxymorphone .....	9668	II
Sufentanil .....	9740	II
Fentanyl .....	9801	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis. In reference to drug codes 7360 (Marihuana) and 7370 (Tetrahydrocannabinols) the company plans to import a synthetic cannabidiol and a synthetic tetrahydrocannabinol. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what

is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022-09057 Filed 4-27-22; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-992]

### Importer of Controlled Substances Application: Purisys, LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Purisys, LLC has applied to be registered as an importer of basic

class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 31, 2022. Such persons may also file a written request for a hearing on the application on or before May 31, 2022.

**ADDRESSES:** The Drug Enforcement Administration (DEA) requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on January 21, 2022, Purisys, LLC, 1550 Olympic Drive, Athens, Georgia 30601-1602, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana Extract .....	7350	I
Marihuana .....	7360	I
Tetrahydrocannabinols ...	7370	I
Nabilone .....	7379	II
Phenylacetone .....	8501	II
Levorphanol .....	9220	II
Thebaine .....	9333	II
Opium, Raw .....	9600	II
Opium, Power .....	9639	II
Opium Granulated .....	9640	II
Noroxymorphone .....	9668	II

Controlled substance	Drug code	Schedule
Concentrate of Poppy Straw.	9670	II
Tapentadol .....	9780	II

The company plans to import Opium, Raw (9600), Opium, Powered (9639) and Opium, Granulated (9640) to manufacture Active Pharmaceutical Ingredient (API) only for distribution to its customers. The company plans to import Phenylacetone (8501) and Poppy Straw Concentrate (9670), to bulk manufacture other controlled substances for distribution to its customers. The company plans to import impurities of buprenorphine that have been determined by DEA to be captured under Thebaine (9333). In reference to Marihuana (7360) and Tetrahydrocannabinols (7370) the company plans to import as synthetic. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022-09034 Filed 4-27-22; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-993]

#### Importer of Controlled Substances Application: SpecGX LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** SpecGX, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 31, 2022. Such persons may also file a written request for a hearing on the application on or before May 31, 2022.

**ADDRESSES:** The Drug Enforcement Administration (DEA) requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrisette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrisette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrisette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on January 26, 2022, SpecGX LLC, 3600 North 2nd Street, Saint Louis, Missouri 63147, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Marihuana .....	7360	I
Phenylacetone .....	8501	II
Coca Leaves .....	9040	II
Thebaine .....	9333	II
Opium, Raw .....	9600	II
Poppy Straw Concentrate.	9670	II
Tapentadol .....	9780	II

The company plans to import the listed controlled substances for bulk manufacture into Active Pharmaceutical Ingredients (API) for distribution to its customers. In reference to Tapentadol (9780) and Thebaine (9333), the company plans to import intermediate forms of these controlled substances for further manufacturing prior to distribution to its customers. In reference to drug code 7360 (Marihuana), the company plans to import synthetic cannabinol. No other activity for this drug is authorized for this registration. Placement of these codes onto the company's registration

does not translate into automatic approval of subsequent permit applications to import controlled substances. Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022-09033 Filed 4-27-22; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-997]

#### Bulk Manufacturer of Controlled Substances Application: Sterling Wisconsin, LLC

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Sterling Wisconsin, LLC, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 27, 2022. Such persons may also file a written request for a hearing on the application on or before June 27, 2022.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment."

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this

is notice that on February 28, 2022, Sterling Wisconsin, LLC, W130N10497 Washington Drive, Germantown, Wisconsin 53022-4448, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide.	7315	I
Marihuana Extract .....	7350	I
Marihuana .....	7360	I
Tetrahydrocannabinols ....	7370	I
Mescaline .....	7381	I
5-Methoxy-N-N-Dimethyltryptamine.	7431	I
Psilocybin .....	7437	I
Oliceridine .....	9245	II
Thebaine .....	9333	II
Alfentanil .....	9737	II

The company plans to bulk manufacture the listed controlled substances to be commercially sold to registered manufacturers/suppliers. In reference to drug codes 7350 (Marihuana Extract), 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022-09060 Filed 4-27-22; 8:45 am]

**BILLING CODE 4410-09-P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. DEA-994]

#### Bulk Manufacturer of Controlled Substances Application: Research Triangle Institute

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of application.

**SUMMARY:** Research Triangle Institute has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before June 27, 2022. Such persons may also file a written request for a hearing on the application on or before June 27, 2022.

**ADDRESSES:** The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to <https://www.regulations.gov> and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on <https://www.regulations.gov>. If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on March 11, 2022, Research Triangle Institute, 3040 East Cornwallis Road Hermann Building, Room 106, Research Triangle Park, North Carolina 27709, applied to be registered as a bulk manufacturer of the following basic class of controlled substance:

Controlled substance	Drug code	Schedule
Tetrahydrocannabinols ...	7370	I

The company plans to bulk manufacture the listed controlled substance synthetically only for distribution to its customers for research and analytical reference standards. No other activities for this drug code are authorized for this registration.

**Matthew J. Strait,**

*Deputy Assistant Administrator.*

[FR Doc. 2022-09056 Filed 4-27-22; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision to the authority to conduct an information collection request (ICR) titled, "ETA Financial Report Form ETA-9130." This comment request is part of DOL's continuing efforts to reduce respondent burden in accord

with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by June 27, 2022.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge by contacting Latonya Torrence via telephone at 202-693-3708 (this is not a toll-free number), TTY 1-877-889-5627 (this is not a toll-free number), or by email at [Torrence.Latonya@dol.gov](mailto:Torrence.Latonya@dol.gov).

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Grants Management, N-4716, 200 Constitution Ave. NW, Washington, DC 20210; by email: [Torrence.Latonya@dol.gov](mailto:Torrence.Latonya@dol.gov); or by fax 202-693-2705.

**FOR FURTHER INFORMATION CONTACT:** Latonya Torrence by telephone at 202-693-3708 (this is not a toll-free number) or by email at [Torrence.Latonya@dol.gov](mailto:Torrence.Latonya@dol.gov).

*Authority:* 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

ETA utilizes the data collection format to assess the effectiveness of ETA programs and to monitor and analyze the financial activity of its grantees, while complying with OMB efforts to streamline federal financial reporting. Grantees are provided with software that reflects the requirements of ETA Form 9130 so that the required data is reported electronically, permitting ease of ETA evaluation.

ETA wants to provide clarification to the instructions regarding the Training Expenditures reporting line item on ETA-9130 forms for the Workforce Innovation and Opportunity Act (WIOA) Adult, Youth, and Dislocated Worker programs; the Trade Adjustment Assistance program; and the Indian and Native American programs. The funds

reported in this line item represent the cumulative amount for training services provided to program participants.

Financial reporting requirements for federal programs are prescribed by OMB under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200 *et seq.*), otherwise known as the Uniform Guidance. Additionally, with the passage of WIOA, there are numerous new statutory requirements that affect financial reporting, including new and/or revised limitations and baselines that require the addition or modification of existing ETA-9130 reporting line items.

This information collection is subject to the PRA. A federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205-0461.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and/or
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

*Agency:* DOL-ETA.

*Type of Review:* Revision.

*Title of Collection:* ETA Financial Report Form ETA-9130.

*Forms:* Form ETA-9130-Basic, ETA-9130-A, ETA 9130-B, ETA-9130-C, ETA-9130-D, ETA-9130-E, ETA-9130-F, ETA-9130-G, ETA-9130H, ETA-9130-I, ETA-9130-J, ETA-9130-K, ETA-9130-L, ETA-9130-M.

*OMB Control Number:* 1205-0461.

*Affected Public:* State workforce agencies, local governments, non-profit organizations, educational institutions, consortia of any and/or all of the above.

*Estimated Number of Respondents:* 20,000.

*Frequency:* Quarterly.

*Total Estimated Annual Responses:* 20,000.

*Estimated Average Time per Response:* .75 hour.

*Estimated Total Annual Burden*

*Hours:* 15,000 hours.

*Total Estimated Annual Other Cost Burden:* \$0.

**Angela Hanks,**

*Acting Assistant Secretary for Employment and Training, Labor.*

[FR Doc. 2022-09024 Filed 4-27-22; 8:45 am]

**BILLING CODE 4510-FT-P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Agency Information Collection Activities; Comment Request; Trade Adjustment Assistance Program Reserve Funding Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, "Trade Adjustment Assistance Program Reserve Funding Request." This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

**DATES:** Consideration will be given to all written comments received by June 27, 2022.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Timothy Theberge, Office of Trade Adjustment Assistance, Room N-5428, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, by telephone at 202-693-3401 (this is not a toll-free number), TTY 1-877-889-5627 (this is not a toll-free number), or by email at [theberge.timothy@dol.gov](mailto:theberge.timothy@dol.gov).

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, Room N-5428, 200 Constitution Avenue NW, Washington, DC 20210; by email: [theberge.timothy@dol.gov](mailto:theberge.timothy@dol.gov); or by fax 202-693-3584.

**FOR FURTHER INFORMATION CONTACT:** Timothy Theberge by telephone at 202-693-3401 (this is not a toll-free number) or by email at [theberge.timothy@dol.gov](mailto:theberge.timothy@dol.gov).  
*Authority:* 44 U.S.C. 3506(c)(2)(A).

**SUPPLEMENTARY INFORMATION:** DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Section 236(a)(2)(D) of the Trade Act of 1974, as amended (Act), requires the Secretary to establish procedures for the distribution of funds remaining after the initial distribution under Section 236(a)(2)(B)(i). Section 241 of the Trade Act of 1974, as amended, requires the Secretary of Labor to certify to the Secretary of the Treasury amounts necessary for each cooperating state to provide services and make payments under the Act. As such, states may request reserve funds to cover the costs of training, job search allowances and relocation allowances, employment and case management services, and state administration of these benefits before DOL issues the final distribution of state allocations. Reserve funds are distributed to states in accordance with

20 CFR 618.920 on an as-needed basis in response to requests to provide monies to those states that experience large, unexpected layoffs, or otherwise have financial needs that are not met by their initial allocation. These funds are requested using the Form ETA-9117. Section 236(a)(2)(D) of the Trade Act of 1974, as amended, authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205-0275.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

*Agency:* DOL-ETA.

*Type of Review:* Extension without changes.

*Title of Collection:* Trade Adjustment Assistance Program Reserve Funding Request.

*Form(s):* ETA 9117, Trade Adjustment Assistance for Workers Funding Request Form.

*OMB Control Number:* 1205-0275.

*Affected Public:* State Governments.

*Estimated Number of Respondents:*

25.

*Frequency:* Once.

*Total Estimated Annual Responses:*

25.

*Estimated Average Time per Response:* 2 hours.

*Estimated Total Annual Burden*

*Hours:* 50 hours.

*Total Estimated Annual Other Cost Burden:* \$0.00.

**Angela Hanks,**

*Acting Assistant Secretary, Labor.*

[FR Doc. 2022-09023 Filed 4-27-22; 8:45 am]

**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Employee Benefits Security Administration (EBSA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that the agency receives on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will

have practical utility; (2) if the information will be processed and used in a timely manner; (3) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202-693-8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) gives the Secretary of Labor the authority to “grant a conditional or unconditional exemption of any fiduciary or transaction, or class of fiduciaries or transactions, from all or part of the restrictions imposed by sections 406 and 407(a).” In order to grant an exemption under section 408, the Department must determine that the exemption is: (1) Administratively feasible; (2) in the interests of the plan and its participants and beneficiaries; and, (3) protective of the rights of the participants and beneficiaries of such plan. The three prohibited transaction class exemptions (PTEs) included in this ICR, (1) PTE 76-1, (2) PTE 77-10, and (3) PTE 78-6, exempt certain types of transactions commonly entered into by “multiemployer” plans from certain of the prohibitions contained in sections 406(a) and 407(a) of ERISA. The Department determined that, in the absence of these exemptions, the affected plans would not be able to operate efficiently or to enter into routine types of transactions necessary for their operations. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 13, 2021 (86 FR 70866).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL-EBSA.

*Title of Collection:* Prohibited Transaction Class Exemptions for Multiple Employer Plans and Multiple Employer Apprenticeship Plans—PTE 1976-1, PTE 1977-10, PTE 1978-6.

*OMB Control Number:* 1210-0058.

*Affected Public:* Private Sector—Businesses or other for-profits and not-for-profit institutions.

*Total Estimated Number of Respondents:* 3,259.

*Total Estimated Number of Responses:* 3,409.

*Total Estimated Annual Time Burden:* 815 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: April 22, 2022.

**Mara Blumenthal,**  
Senior PRA Analyst.

[FR Doc. 2022-09025 Filed 4-27-22; 8:45 am]

**BILLING CODE 4510-29-P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: 22-034]

### Name of Information Collection: NASA Contractor Financial Management Records

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of information collection.

**SUMMARY:** The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

**DATES:** Comments are due by May 31, 2022.

**ADDRESSES:** Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain).

Find this particular information collection by selecting “Currently under 30-day Review-Open for Public Comments” or by using the search function.

### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546, 202-358-2375 or email [claire.a.little@nasa.gov](mailto:claire.a.little@nasa.gov).

### SUPPLEMENTARY INFORMATION:

#### I. Abstract

The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting system. Respondents are reimbursed for associated cost to provide the information, per their negotiated contract price and associated terms of the contract. There are no “total capital and start-up” or “total operation and maintenance and purchase of services” costs associated since NASA policy requires that data reported is generated from the contractors' existing system. The contractors' internal management system shall be relied upon to the maximum extent possible.

#### II. Methods of Collection

NASA collects this information electronically and that is the preferred manner, however information may also be collected via mail or fax.

#### III. Data

*Title:* NASA Contractor Financial Management Reports.

*OMB Number:* 2700-0003.

*Type of review:* Renewal of a previously approved collection.

*Affected Public:* Business or other for profit or not-for-profit institutions.

*Estimated Annual Number of Activities:* 500.

*Estimated Number of Respondents per Activity:* 12.

*Annual Responses:* 6,000.

*Estimated Time per Response:* 9 hours.

*Estimated Total Annual Burden Hours:* 54,000 hours.

*Estimated Total Annual Cost:* \$9,100,000.

#### IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has

practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

**Lori Parker,**

*NASA PRA Clearance Officer.*

[FR Doc. 2022-09079 Filed 4-27-22; 8:45 am]

**BILLING CODE 7510-13-P**

## NATIONAL SCIENCE FOUNDATION

### Request for Recommendations for Membership on Directorate and Office Advisory Committees

**ACTION:** Notice.

**SUMMARY:** The National Science Foundation (NSF) requests recommendations for membership on its scientific and technical Federal advisory committees. Recommendations should consist of the name of the submitting individual, the organization or the

affiliation providing the member nomination, the name of the recommended individual, the recommended individual's curriculum vitae, an expression of the individual's interest in serving, and the following recommended individual's contact information: Employment address, telephone number, fax number, and email address. Self-recommendations are accepted. If you would like to make a membership recommendation for any of the NSF scientific and technical Federal advisory committees, please send your recommendation to the appropriate committee contact person listed in the chart below.

**ADDRESSES:** The mailing address for the National Science Foundation is 2415 Eisenhower Avenue, Alexandria, VA 22314.

Web links to individual committee information may be found on the NSF website: <https://www.nsf.gov/>, NSF Advisory Committees.

**SUPPLEMENTARY INFORMATION:** Each Directorate and Office has an external advisory committee that typically meets twice a year to review and provide advice on program management; discuss current issues; and review and provide advice on the impact of policies, programs, and activities in the disciplines and fields encompassed by the Directorate or Office. In addition to Directorate and Office advisory committees, NSF has several

committees that provide advice and recommendations on specific topics including astronomy and astrophysics; environmental research and education; equal opportunities in science and engineering; cyberinfrastructure; international science and engineering; and business and operations.

A primary consideration when formulating committee membership is recognized knowledge, expertise, or demonstrated ability.<sup>1</sup> Other factors that may be considered are balance among diverse institutions, regions, and groups underrepresented in science, technology, engineering, and mathematics. Committee members serve for varying term lengths, depending on the nature of the individual committee. Although we welcome the recommendations we receive, we regret that NSF will not be able to acknowledge or respond positively to each person who contacts NSF or has been recommended. NSF intends to publish a similar notice to this on an annual basis. NSF will keep recommendations active for 12 months from the date of receipt.

The chart below is a listing of the committees seeking recommendations for membership. Recommendations should be sent to the contact person identified below. The chart contains web addresses where additional information about individual committees is available.

Advisory committee	Contact person
Advisory Committee for Biological Sciences, <a href="https://www.nsf.gov/bio/advisory.jsp">https://www.nsf.gov/bio/advisory.jsp</a> .	Montona Futrell-Griggs, Directorate for Biological Sciences; phone: (703) 292-8400; email: <a href="mailto:mfutrell@nsf.gov">mfutrell@nsf.gov</a> ; fax: (703) 292-9154.
Advisory Committee for Computer and Information Science and Engineering, <a href="https://www.nsf.gov/cise/advisory.jsp">https://www.nsf.gov/cise/advisory.jsp</a> .	Brenda Williams, Directorate for Computer and Information Science and Engineering; phone: (703) 292-4554; email: <a href="mailto:bwiliam@nsf.gov">bwiliam@nsf.gov</a> ; fax: (703) 292-9454.
Advisory Committee for Cyberinfrastructure, <a href="https://www.nsf.gov/cise/aci/advisory.jsp">https://www.nsf.gov/cise/aci/advisory.jsp</a> .	Carl Anderson, Division of Advanced Cyberinfrastructure; phone: (703) 292-4545; email: <a href="mailto:cnanders@nsf.gov">cnanders@nsf.gov</a> ; fax: (703) 292-9060.
Advisory Committee for Education and Human Resources, <a href="https://www.nsf.gov/ehradvisory.jsp">https://www.nsf.gov/ehradvisory.jsp</a> .	Bonnie Green, Directorate for Education and Human Resources; phone: (703) 292-8600; email: <a href="mailto:bongreen@nsf.gov">bongreen@nsf.gov</a> ; fax: (703) 292-9179.
Advisory Committee for Engineering, <a href="https://www.nsf.gov/eng/advisory.jsp">https://www.nsf.gov/eng/advisory.jsp</a> .	Cecile Gonzalez, Directorate for Engineering; phone: (703) 292-8300; email: <a href="mailto:cgonzal@nsf.gov">cgonzal@nsf.gov</a> ; fax: (703) 292-9467.
Advisory Committee for Geosciences, <a href="https://www.nsf.gov/geo/advisory.jsp">https://www.nsf.gov/geo/advisory.jsp</a> .	Melissa Lane, Directorate for Geosciences; phone: (703) 292-8500; email: <a href="mailto:mlane@nsf.gov">mlane@nsf.gov</a> ; fax: (703) 292-9042.
Advisory Committee for International Science and Engineering, <a href="https://www.nsf.gov/od/oise/advisory.jsp">https://www.nsf.gov/od/oise/advisory.jsp</a> .	Christopher Street, Office of International Science and Engineering; phone: (703) 292-8568; email: <a href="mailto:ac-ise@nsf.gov">ac-ise@nsf.gov</a> ; fax: (703) 292-9481.
Advisory Committee for Mathematical and Physical Sciences, <a href="https://www.nsf.gov/mps/advisory.jsp">https://www.nsf.gov/mps/advisory.jsp</a> .	Angela Harris, Directorate for Mathematical and Physical Sciences; phone: (703) 292-8800; email: <a href="mailto:amharris@nsf.gov">amharris@nsf.gov</a> ; fax: (703) 292-9151.
Advisory Committee for Social, Behavioral & Economic Sciences, <a href="https://www.nsf.gov/sbe/advisory.jsp">https://www.nsf.gov/sbe/advisory.jsp</a> .	John Garneski, Directorate for Social, Behavioral & Economic Sciences; phone: (703) 292-8700; email: <a href="mailto:jgarnesk@nsf.gov">jgarnesk@nsf.gov</a> ; fax: (703) 292-9083.
Advisory Committee for Polar Programs, <a href="https://www.nsf.gov/geo/opp/advisory.jsp">https://www.nsf.gov/geo/opp/advisory.jsp</a> .	Bev Walker, Office of Polar Programs; phone: (703) 292-2614; email: <a href="mailto:bwalker@nsf.gov">bwalker@nsf.gov</a> ; fax: (703) 292-9081.
Committee on Equal Opportunities in Science and Engineering, <a href="https://www.nsf.gov/od/oia/activities/ceose/">https://www.nsf.gov/od/oia/activities/ceose/</a> .	Bernice Anderson, Office of Integrative Activities; phone: (703) 292-8040; email: <a href="mailto:banderso@nsf.gov">banderso@nsf.gov</a> ; fax: (703) 292-9040.

<sup>1</sup> Federally registered lobbyists are not eligible for appointment to these Federal advisory committees.

Advisory committee	Contact person
Advisory Committee for Business and Operations, <a href="https://www.nsf.gov/oirm/bocomm/">https://www.nsf.gov/oirm/bocomm/</a> .	Jeffrey Rich, Office of Information and Resource Management; phone: (703) 292–8100; email: <a href="mailto:jrich@nsf.gov">jrich@nsf.gov</a> ; fax: (703) 292–9369. Maria Koszalka, Office of Budget, Finance and Award Management; phone: (703) 292–8200; email: <a href="mailto:mkosalka@nsf.gov">mkosalka@nsf.gov</a> ; fax: (703) 292–xxxx.
Advisory Committee for Environmental Research and Education, <a href="https://www.nsf.gov/ere/ereweb/advisory.jsp">https://www.nsf.gov/ere/ereweb/advisory.jsp</a> .	Gayle Pugh Lev, Office of Integrative Activities; phone: (703) 292–8040; email: <a href="mailto:acere-poc@nsf.gov">acere-poc@nsf.gov</a> ; fax: (703) 292–9040.
Astronomy and Astrophysics Advisory Committee, <a href="https://www.nsf.gov/mps/ast/aaac.jsp">https://www.nsf.gov/mps/ast/aaac.jsp</a> . STEM Education Advisory Panel, <a href="https://nsf.gov/ehr/STEMEdAdvisory.jsp">https://nsf.gov/ehr/STEMEdAdvisory.jsp</a> .	Donna O'Malley, Division of Astronomical Sciences; phone: (703) 292–7319; email: <a href="mailto:domalley@nsf.gov">domalley@nsf.gov</a> ; fax: (703) 292–9452. Jolene Jesse, Directorate for Education and Human Resources; Please visit website to submit recommendations.

Dated: April 18, 2022.

**Crystal Robinson,**

*Committee Management Officer.*

[FR Doc. 2022–08538 Filed 4–27–22; 8:45 am]

BILLING CODE 7555–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94787; File No. SR–CboeBYX–2021–028]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report

April 22, 2022.

On November 22, 2021, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b–4 thereunder,<sup>3</sup> a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.<sup>4</sup> On January 20, 2022, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> On March 7,

2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.<sup>8</sup>

On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 to the proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/byx/](http://markets.cboe.com/us/equities/regulation/rule_filings/byx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

This Amendment No. 1 to SR–BYX–2021–028 amends and replaces in its entirety the proposal as originally submitted on November 17, 2021. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to amend Rule 11.22(f) to provide for a new data product to be known as the Short Volume Report. The proposal introduces the Short Volume Report which will be available for purchase to BYX Members (“Members”)<sup>9</sup> and non-Members. The Exchange notes that the proposed Short Volume Report generally consists of information similar to that included in various data products offered by the Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange LLC (“NYSE”), and/or information that is currently available or determinable from other publicly available sources such as Cboe DataShop,<sup>10</sup> the Cboe website,<sup>11</sup> or the CTA and UTP feeds made available by the Securities Information Processor (“SIP”), the only exception being the proposed transaction counts related to sell short and sell short exempt.

A description of each market data product offered by the Exchange is described in Exchange Rule 11.22. The Exchange proposes to amend Rule 11.22(f) to introduce and add a description of the Short Volume Report. The Exchange proposes to describe the Short Volume Report as “an end-of-day

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b–4.

<sup>4</sup> See Securities Exchange Act Release No. 93689 (December 1, 2021), 86 FR 69335. The comment letters received on the proposed rule change are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebyx-2021-028/sr-cboebyx2021028.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 94009, 87 FR 4098 (January 26, 2022). The Commission designated March 7, 2022, as the date by which it should approve, disapprove, or institute

proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 94373, 87 FR 14060 (March 11, 2022).

<sup>9</sup> See Rule 1.5(n).

<sup>10</sup> See Equity and ETF Trades Data | Subscription ([cboe.com](https://cboe.com)).

<sup>11</sup> See Cboe BYX U.S. Equities Exchange Short Sale Reports.

report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all shares for buy, sell, sell short, and sell short exempt trades.”<sup>12</sup> Specifically, the end-of-day report will include the following information: Trade date,<sup>13</sup> symbol,<sup>14</sup> total volume,<sup>15</sup> buy volume,<sup>16</sup> buy trade count,<sup>17</sup> sell long volume,<sup>18</sup> sell long trade count,<sup>19</sup> sell short volume,<sup>20</sup> sell short trade count,<sup>21</sup> sell short exempt volume,<sup>22</sup> and sell short exempt trade count.<sup>23</sup> As discussed in further detail below, the Exchange notes that, with the exception of short sale and short sale exempt transaction counts, all components of the proposed Short Volume Report are either data points similar to those provided by NYSE and Nasdaq,<sup>24</sup> and/or attainable from existing publicly available data sources such as the SIP, the Cboe website, or Cboe DataShop. The Exchange believes that the consolidation and presentation of data as proposed in the Short Volume Report will benefit market participants because such report will allow market

<sup>12</sup> Information provided in the report includes only trade data, and does not include order data.

<sup>13</sup> Trade date refers to the date of trading activity.

<sup>14</sup> Symbol refers to the Cboe formatted symbol in which the trading activity occurred. See [https://cdn.cboe.com/resources/membership/US\\_Symbology\\_Reference.pdf](https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf).

<sup>15</sup> Total volume is the total share volume of all buy, sell long, sell short, and sell short exempt order executions and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume.

<sup>16</sup> Buy volume is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume.

<sup>17</sup> Buy trade count is the total trade count of all buy order executions and is equal to the sum of sell long trade count, sell short trade count, and sell short exempt trade count.

<sup>18</sup> Sell long volume is the total share volume of all sell long order executions.

<sup>19</sup> Sell long trade count is the total trade count of all sell long order executions.

<sup>20</sup> Sell short volume is the total share volume of all sell short order executions and will not include sell short exempt volume.

<sup>21</sup> Sell short trade count is the total trade count of all sell short order executions and will not include short sale exempt trades.

<sup>22</sup> Sell short exempt volume is the total share volume of all sell short exempt order executions.

<sup>23</sup> Sell short exempt trade count is the total trade count of all sell short exempt order executions.

<sup>24</sup> The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume and trade counts executed on BYX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

participants to better discern whether daily sell activity is long or short, or sell short exempt. Such insight may aid participants in better understanding the changing risk environment on a daily basis.

The Short Volume Report will be available for purchase<sup>25</sup> on a monthly subscription basis and both Members and non-Member subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.<sup>26</sup> Additionally, historical Short Volume Reports dating as far back as January 2, 2015 will be available for purchase on an ad hoc basis in monthly increments. The subscription files and historical files will include the same data points. Lastly, the Exchange notes the proposed product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may subscribe to it only if they voluntarily choose to do so.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>27</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>28</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>29</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique

market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. In this regard, the Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency of short sale data, which benefits investors by fostering better informed trading.

As noted above, aside from the proposed sell short and sell short exempt transaction counts, the proposed Short Volume Report consists of information similar to that included in various data products offered Nasdaq and NYSE, and/or information that is available or determinable from other publicly available sources such as Cboe DataShop,<sup>30</sup> the Cboe website,<sup>31</sup> or the SIP. The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of the proposal.

## Trade Date and Symbol

The proposed data points for trade date and symbol are generally available from numerous data sources, such as the Nasdaq Daily Short Sale Volume files. The Nasdaq Daily Short Sale Volume files “reflect the aggregate number of shares executed on the Nasdaq market during regular trading hours on a daily basis. At the security level, Nasdaq will show the volume for executed short sale trades, as well as the total trading volume for the Nasdaq market.”<sup>32</sup> Specifically, the Nasdaq Daily Short Sale Volume files provide the date, which is defined as the trade date of a transaction, and the symbol, which is defined as the trading symbol, for trading activity on Nasdaq.<sup>33</sup> As proposed, the Exchange seeks to provide trade date and symbol information consistent with how the Nasdaq Daily Short Volume files capture these data points.

## Total Volume

As noted above, the proposed total volume data point is equal to the sum of all buy, sell, sell short, and sell short exempt trades. The Exchange notes that the proposed total volume data point can be derived from the SIP, as well

<sup>30</sup> *Supra* note 4.

<sup>31</sup> *Supra* note 5.

<sup>32</sup> See Nasdaq Pricing Schedule, Section 152(a).

<sup>33</sup> See <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>.

<sup>25</sup> The Exchange intends to submit a separate rule filing to adopt fees for the Short Volume Report product.

<sup>26</sup> See Exchange Rule 1.5(c).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> *Id.*

through information made available through reports on Cboe DataShop<sup>34</sup> or other vendors.

Additionally, the proposed total volume data point is similar in nature to that offered in the NYSE Daily Short Volume file and Nasdaq Daily Short Sale file. The NYSE Daily Short Volume file provides a daily summary report of short sale volume for every equity symbol traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the “NYSE affiliated exchanges”) during the day.<sup>35</sup> NYSE describes total volume as “the total share volume of all order executions.”<sup>36</sup> Similarly, the Nasdaq Daily Short Sale Volume file provides total volume, which is described as the “[a]ggregate reported share volume of executed short sale trades during regular trading hours.”<sup>37</sup> As noted above, the proposed Short Volume Report will include total volume comprised of the total share volume of all buy, sell long, sell short, and sell short exempt order executions, and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume. Therefore, the proposed total volume represents both the buy-side and sell-side of each execution. In contrast, the NYSE and Nasdaq products represent total volume as one side of the execution (e.g., the buy-side of each execution or the total share volume of the executions). Thus, information similar to the Exchange’s total volume could be determined by simply doubling the total volume identified in the NYSE Daily Short Volume file or the Nasdaq Short Sale Volume file. Given this, the proposed total volume is a data point already available to the public, and raises no novel issues. Furthermore, the Exchange believes that providing the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume as proposed will serve as an integrity check for each of the volume fields. Specifically, if total volume does *not* equal the sum of the aforementioned volume fields, subscribers could easily identify a potential error in the data. Therefore, the Exchange believes the data point as proposed may provide greater benefits to subscribers than similar data points offered in competing products.

#### Buy Volume

The proposed buy volume data point is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume. Exchange buy volume is publicly available via the SIP, as well as through reports on Cboe DataShop<sup>38</sup> and other vendors.

Additionally, the NYSE Daily Short Sale file and Nasdaq Daily Short Volume file currently provides similar information. As described above, the Nasdaq and NYSE products each provide “total volume” which is equivalent to the buy volume as proposed in the Short Volume Report. The only difference between the proposal and the NYSE and Nasdaq data points is that the proposed Short Volume Report includes only information related to trades executed on the Exchange, whereas the NYSE and Nasdaq includes only information related to trades executed on NYSE and Nasdaq, respectively, and their affiliates. Therefore, buy volume is a data point already provided for in other exchange products, and as such, the buy volume proposed by the Exchange presents no unique issues.

#### Buy Trade Count

Trade count information for trades executed on the Exchange is currently publicly available via the SIP, as well as through reports on Cboe DataShop<sup>39</sup> and other vendors. Specifically, the Equity, ETF, and Index Trades product offered on Cboe DataShop provides trade price, trade size, trade condition, trading venue, and the National Best Bid and Offer (“NBBO”) for each trade record on a daily basis. Therefore, buy trade count for trades executed on the Exchange can be derived from the Equity, ETF, and Index Trades product by summing the number of trade records on BYX for the day. Accordingly, buy trade count is a data point already available to the public and thus present no new novel issues.

#### Sell Long Volume

As proposed, sell long volume represents the total share volume of all sell long order executions. The Exchange notes that other exchanges, such as NYSE, offer products with related data points that users can utilize to calculate sell long volume as contemplated by the proposed Short

Volume Report. Specifically, the NYSE Daily Short Volume File provides the total volume (i.e., the total share volume of all order executions) and the short volume (i.e., the total share volume of all short order executions, which is the sum of all sell short, sell short exempt, and sell short with slide order executions).<sup>40</sup> Therefore, sell long information could be derived from the NYSE Daily Short Volume file by subtracting the short volume from the total volume. As such, sell long volume is not a data point unique only to the proposed Short Volume Report, and does not raise any novel issues or concerns.

#### Sell Long Trade Count

As proposed, sell long trade count represents the total trade count of all sell long order executions. Currently, this data can be derived using publicly available information available in the Short Sale Daily Reports which are available on the Cboe website,<sup>41</sup> and the Equity, ETF, and Index Trades product available on Cboe DataShop.<sup>42</sup> Specifically, the Short Sale Daily Transaction report on the Cboe website reflects short sale executions on the Exchange as they appeared on the consolidated tape. Short sale and short sale exempt trade count information can be determined summing the total number of transactions identified in the Short Sale Daily Transaction report. Long sale trade count could then be determined by subtracting the short sale transaction count from the buy trade count, which can be obtained from Cboe DataShop<sup>43</sup> as described above. Because sell long trade count can be calculated from existing publicly available information it presents no novel issues.

#### Sell Short Volume and Sell Short Exempt Volume

The sell short volume and sell short exempt volume in the proposed Short Volume Report is similar to a data point currently offered through NYSE’s Daily Short Volume file. Specifically, the NYSE Daily Short Volume file includes both short volume and sell short exempt volume for shares executed on NYSE and its affiliates.<sup>44</sup> Accordingly, the provision of separate sell short volume and sell short exempt volume is not without precedent. The only difference in the data from the NYSE Daily Short Volume file and the proposed data is that the NYSE report includes only

<sup>34</sup> *Supra* note 4.

<sup>35</sup> See the NYSE Daily Short Volume Client Specification, Section 1, Introduction at [https://www.nyse.com/publicdocs/nyse/data/Daily\\_Short\\_Volume\\_Client\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_v1.3.pdf).

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 27.

<sup>38</sup> *Supra* note 4. Buy volume available on Cboe DataShop is equivalent to the proposed buy volume.

<sup>39</sup> *Supra* note 4. For purposes of this proposal, the trade size data point from Cboe DataShop is the same as the proposed buy volume data point.

<sup>40</sup> *Supra* note 27.

<sup>41</sup> *Supra* note 5.

<sup>42</sup> *Supra* note 4.

<sup>43</sup> *Id.*

<sup>44</sup> *Supra* note 27.

information related to trades executed on the NYSE affiliated exchanges, whereas the Short Volume Report includes only information related to trades executed on the Exchange.

#### Sell Short Trade Count and Sell Short Exempt Trade Count

As noted above, the Short Volume Report will include both a sell short trade count and a sell short exempt trade count. The sell short trade count is equal to the total trade count of sell short order executions. The short sell exempt trade count is equal to the total trade count of sell short exempt orders.

Today, sell short and sell short exempt trade counts are not available or easily derivable in existing market data products or publicly available information. However, the Short Sale Daily Transaction report available on the Cboe website<sup>45</sup> provides a short sale trade count consisting of combined sell short and sell short exemptions. The Exchange believes that bifurcating sell short trade counts and sell short exempt trade counts will benefit investors by providing insight into the risk environment around a security subject to the restrictions of Regulation SHO Rule 201.<sup>46</sup> As a general matter, when a security becomes subject to the short sale price restrictions of Rule 201, it is because that security's price is experiencing extreme downward price pressure. In adopting Rule 201, the Commission believed it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline. A sale order shall be marked "short exempt" only if the provisions of Rule 201(c) or 201(d) are met.<sup>47</sup> Rule 201(c), for example, generally allows a broker-dealer to mark a sale "short exempt" if the broker-dealer identifies the order as being at a price above the current national best bid at the time of submission of the order to a trading center. In part, the Commission believed that Rule 201 would effectively restrict short sellers from participating as liquidity takers when Rule 201 is in effect, and instead act as liquidity providers, adding depth to the market, as short sale orders will be executed only when purchasers arrive willing to buy at prices above the national best bid.<sup>48</sup>

In this sense, by having the ability to ascertain specific short exempt trade counts, subscribers may be better able to assess the qualitative nature of sell side activity in a particular security. A marked increase or decrease in short exempt trade count can perhaps indicate whether investors are willing to pay a higher price for a security, rather than seek buying opportunities at lower prices as the stock continues to decline. Therefore, the Exchange believes the proposal will provide greater benefits to subscribers compared to what is currently available on the Cboe website, and does not represent a significant departure from information that is currently available.

Furthermore, similar data points are derivable from the NYSE's Monthly Short Sales file, which provides a record of every short sale transaction for each security traded on the NYSE affiliated exchanges during the month.<sup>49</sup> Specifically, the NYSE Monthly Short Sale file includes a "short type" indicator for each transaction that indicates whether the short sale is short sale exempt or not short sale exempt and also includes the size of each transaction.<sup>50</sup> Therefore, subscribers to the NYSE Monthly Short Sales file can determine the sell short trade counts and sell short exempt trade counts by summing the number of each transaction on a given day during the prior month. Although the NYSE Monthly Short Sale file provides similar data points to that proposed here, such information is available on a monthly basis rather than a daily basis. Nonetheless, as proposed the sell short and sell short exempt trade counts would be available to subscribers on an end-of-day basis it is not designed to provide information for which subscribers would make intraday trading decisions. Therefore, the Exchange does not believe the proposed data points would provide subscribers with an unfair advantage over other market participants. The Exchange believes the proposal strikes an appropriate balance in providing useful information to subscribers that is not a significant departure from existing information, but does not provide subscribers with sensitive information for which subscribers would make intraday trading decisions.

In sum, except for short sale and short sale exempt trade counts, each of the data points included in the proposed

Short Volume Report are currently either available or derivable from a product of a competitor exchange or are publicly available. The Exchange seeks to gather information from each of these separate data points and compile such information into a useful format such as the proposed Short Volume Report. The Exchange believes that the proposed product will benefit market participants because consolidating the aforementioned data points in a single data product will allow market participants to more easily understand the changing risk environment on a daily basis and allow for more informed trading decisions. The information included in the proposed Short Volume Report will be provided on an end-of-day basis and will not provide information on an intraday basis. Nonetheless, subscribers will have access to not only the current end-of-day Short Volume Report, but historical end-of-day reports dating back to January 2, 2015. As such, the Exchange believes the proposal will provide subscribers with valuable information that may help in identifying historical price trends and short sale activity in a specific security. The proposal provides trade volume and trade count information but provides nothing to indicate who is responsible for selling pressure in a given security. Further, the proposal only provides information as it relates to transactions and provides no order information. Given this, combined with the general availability of the information comprising the Short Volume Report, the Exchange does not believe that the proposed Short Volume Report provides users or subscribers with sensitive trading information or an unfair competitive advantage.

Finally, as noted above the proposed Short Sale Report is a completely voluntary product, and participants are not required to subscribe to the Short Volume Report. Moreover, the Short Volume Report is available to all potential users, regardless of size. Therefore, the Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product that provides data similar to that offered by other competitor equities exchanges or

<sup>45</sup> *Supra* note 5.

<sup>46</sup> 17 CFR 242.201.

<sup>47</sup> 17 CFR 242.200(g)(2).

<sup>48</sup> *Id.* at 58.

<sup>49</sup> See the NYSE Monthly Short Sales Client Specification, Section 1, Introduction, at [https://www.nyse.com/publicdocs/nyse/Monthly\\_Short\\_Sales\\_Spec\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/Monthly_Short_Sales_Spec_v1.3.pdf).

<sup>50</sup> *Id.*

data that is currently publicly available via the SIP, the Cboe website or DataShop, or other vendors. Any differences in the proposed product to similar products offered by competing exchanges are intended to better understand the changing risk environment on a daily basis. The Exchange is proposing to introduce the Short Volume Report in order to keep pace with changes in the industry and evolving customer needs and believes this proposed rule change would contribute to robust competition among national securities exchanges. Further, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Short Volume Report will be available equally to all Members and non-Members that choose to subscribe to such report. As stated, the Short Volume Report is optional and Members and non-Members may choose to subscribe, or not, based on their view of the additional benefits and added value provided by utilizing the Short Volume Report. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBYX-2021-028 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeBYX-2021-028. This file number should be included on the subject line if email is used. To help the

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBYX-2021-028 and should be submitted on or before May 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94783; File No. SR-CboeEDGX-2021-049]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report, Modify the Name of Rule 13.8 to "Data Products", and Add a Preamble to Rule 13.8

April 22, 2022.

On November 17, 2021, Cboe EDGX Exchange, Inc. ("Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) <sup>1</sup> of the Securities

Exchange Act of 1934 ("Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> a proposed rule change to adopt Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report, modify the name of Rule 13.8 to "Data Products", and add a preamble to Rule 13.8. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021. <sup>4</sup> On January 20, 2022, pursuant to Section 19(b)(2) of the Act, <sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. <sup>6</sup> On March 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act <sup>7</sup> to determine whether to approve or disapprove the proposed rule change. <sup>8</sup>

On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 to the proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to adopt Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report, modify the name of Rule 13.8 to "Data Products", and add a preamble to Rule 13.8. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://markets.cboe.com/us/>

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 93696 (December 1, 2021), 86 FR 69306. The comment letters received on the proposed rule change are available on the Commission's website at: <https://www.sec.gov/comments/sr-cboeedgx-2021-049/srcboeedgx2021049.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 94008, 87 FR 4069 (January 26, 2022). The Commission designated March 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 94369, 87 FR 14056 (March 11, 2022).

<sup>51</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

*options/regulation/rule\_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

This Amendment No. 1 to SR-EDGX-2021-049 amends and replaces in its entirety the proposal as originally submitted on November 17, 2021. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to adopt Rule 13.8(h) to provide for a new data product to be known as the Short Volume Report. The proposal introduces the Short Volume Report which will be available for purchase to EDGX Members ("Members")<sup>9</sup> and non-Members. The Exchange notes that the proposed Short Volume Report generally consists of information similar to that included in various data products offered by the Nasdaq Stock Market LLC ("Nasdaq") and the New York Stock Exchange LLC ("NYSE"), and/or information that is currently available or determinable from other publicly available sources such as Cboe DataShop,<sup>10</sup> the Cboe website,<sup>11</sup> or the CTA and UTP feeds made available by the Securities Information Processor ("SIP"), the only exception being the proposed transaction counts related to sell short and sell short exempt.

A description of each market data product offered by the Exchange is described in Exchange Rule 13.8. The Exchange proposes to amend Rule 13.8(h) to introduce and add a description of the Short Volume Report.

The Exchange proposes to describe the Short Volume Report as "an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all shares for buy, sell, sell short, and sell short exempt trades."<sup>12</sup> Specifically, the end-of-day report will include the following information: trade date,<sup>13</sup> symbol,<sup>14</sup> total volume,<sup>15</sup> buy volume,<sup>16</sup> buy trade count,<sup>17</sup> sell long volume,<sup>18</sup> sell long trade count,<sup>19</sup> sell short volume,<sup>20</sup> sell short trade count,<sup>21</sup> sell short exempt volume,<sup>22</sup> and sell short exempt trade count.<sup>23</sup> As discussed in further detail below, the Exchange notes that, with the exception of short sale and short sale exempt transaction counts, all components of the proposed Short Volume Report are either data points similar to those provided by NYSE and Nasdaq,<sup>24</sup> and/or attainable from existing publicly available data sources such as the SIP, the Cboe website, or Cboe DataShop. The Exchange believes that the consolidation and presentation of data as proposed in the Short Volume

<sup>12</sup> Information provided in the report includes only trade data, and does not include order data.

<sup>13</sup> Trade date refers to the date of trading activity.

<sup>14</sup> Symbol refers to the Cboe formatted symbol in which the trading activity occurred. See [https://cdn.cboe.com/resources/membership/US\\_Symbology\\_Reference.pdf](https://cdn.cboe.com/resources/membership/US_Symbology_Reference.pdf).

<sup>15</sup> Total volume is the total share volume of all buy, sell long, sell short, and sell short exempt order executions and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume.

<sup>16</sup> Buy volume is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume.

<sup>17</sup> Buy trade count is the total trade count of all buy order executions and is equal to the sum of sell long trade count, sell short trade count, and sell short exempt trade count.

<sup>18</sup> Sell long volume is the total share volume of all sell long order executions.

<sup>19</sup> Sell long trade count is the total trade count of all sell long order executions.

<sup>20</sup> Sell short volume is the total share volume of all sell short order executions and will not include sell short exempt volume.

<sup>21</sup> Sell short trade count is the total trade count of all sell short order executions and will not include short sale exempt trades.

<sup>22</sup> Sell short exempt volume is the total share volume of all sell short exempt order executions.

<sup>23</sup> Sell short exempt trade count is the total trade count of all sell short exempt order executions.

<sup>24</sup> The Exchange notes that Nasdaq's comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume and trade counts executed on EDGX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

Report will benefit market participants because such report will allow market participants to better discern whether daily sell activity is long or short, or sell short exempt. Such insight may aid participants in better understanding the changing risk environment on a daily basis.

The Short Volume Report will be available for purchase<sup>25</sup> on a monthly subscription basis and both Members and non-Member subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the Post-Closing Session.<sup>26</sup> Additionally, historical Short Volume Reports dating as far back as January 2, 2015 will be available for purchase on an ad hoc basis in monthly increments. The subscription files and historical files will include the same data points. Lastly, the Exchange notes the proposed product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may subscribe to it only if they voluntarily choose to do so.

Based on the above proposal, the Exchange also proposes to amend the name of Rule 13.8 from "EDGX Book Feeds" to "Data Products". Such an amendment would accurately describe the Rule as the proposed product is not a book feed, but rather a data product. Further, the existing data feeds identified in Rule 13.8 are also data products. The Exchange also proposes to add the following preamble to Rule 13.8: "The Exchange offers the following data products free of charge, unless otherwise noted in the Exchange's fee schedule". The proposed language conforms to rule text provided in Cboe BZX Exchange, Inc. ("BZX") and Cboe BYX Exchange, Inc. ("BYX") Rules 11.22.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>27</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>28</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation

<sup>25</sup> The Exchange intends to submit a separate rule filing to adopt fees for the Short Volume Report product.

<sup>26</sup> See Exchange Rule 1.5(r).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> See Exchange Rule 1.5(n).

<sup>10</sup> See Equity and ETF Trades Data | Subscription ([cboe.com](https://cboe.com)).

<sup>11</sup> See Cboe EDGX U.S. Equities Exchange Short Sale Reports.

and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>29</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. In this regard, the Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency of short sale data, which benefits investors by fostering better informed trading.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. In this regard, the Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency of short sale data, which benefits investors by fostering better informed trading.

As noted above, aside from the proposed sell short and sell short exempt transaction counts, the proposed Short Volume Report consists of information similar to that included in various data products offered Nasdaq and NYSE, and/or information that is available or determinable from other publicly available sources such as Cboe DataShop,<sup>30</sup> the Cboe website,<sup>31</sup> or the

SIP. The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of the proposal.

#### Trade Date and Symbol

The proposed data points for trade date and symbol are generally available from numerous data sources, such as the Nasdaq Daily Short Sale Volume files. The Nasdaq Daily Short Sale Volume files “reflect the aggregate number of shares executed on the Nasdaq market during regular trading hours on a daily basis. At the security level, Nasdaq will show the volume for executed short sale trades, as well as the total trading volume for the Nasdaq market.”<sup>32</sup> Specifically, the Nasdaq Daily Short Sale Volume files provide the date, which is defined as the trade date of a transaction, and the symbol, which is defined as the trading symbol, for trading activity on Nasdaq.<sup>33</sup> As proposed, the Exchange seeks to provide trade date and symbol information consistent with how the Nasdaq Daily Short Volume files capture these data points.

#### Total Volume

As noted above, the proposed total volume data point is equal to the sum of all buy, sell, sell short, and sell short exempt trades. The Exchange notes that the proposed total volume data point can be derived from the SIP, as well through information made available through reports on Cboe DataShop<sup>34</sup> or other vendors.

Additionally, the proposed total volume data point is similar in nature to that offered in the NYSE Daily Short Volume file and Nasdaq Daily Short Sale file. The NYSE Daily Short Volume file provides a daily summary report of short sale volume for every equity symbol traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the “NYSE affiliated exchanges”) during the day.<sup>35</sup> NYSE describes total volume as “the total share volume of all order executions.”<sup>36</sup> Similarly, the Nasdaq Daily Short Sale Volume file provides total volume, which is described as the “[a]ggregate reported share volume of executed short

sale trades during regular trading hours.”<sup>37</sup> As noted above, the proposed Short Volume Report will include total volume comprised of the total share volume of all buy, sell long, sell short, and sell short exempt order executions, and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume. Therefore, the proposed total volume represents both the buy-side and sell-side of each execution. In contrast, the NYSE and Nasdaq products represent total volume as one side of the execution (*e.g.*, the buy-side of each execution or the total share volume of the executions). Thus, information similar to the Exchange’s total volume could be determined by simply doubling the total volume identified in the NYSE Daily Short Volume file or the Nasdaq Short Sale Volume file. Given this, the proposed total volume is a data point already available to the public, and raises no novel issues. Furthermore, the Exchange believes that providing the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume as proposed will serve as an integrity check for each of the volume fields. Specifically, if total volume does *not* equal the sum of the aforementioned volume fields, subscribers could easily identify a potential error in the data. Therefore, the Exchange believes the data point as proposed may provide greater benefits to subscribers than similar data points offered in competing products.

#### Buy Volume

The proposed buy volume data point is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume. Exchange buy volume is publicly available via the SIP, as well as through reports on Cboe DataShop<sup>38</sup> and other vendors.

Additionally, the NYSE Daily Short Sale file and Nasdaq Daily Short Volume file currently provides similar information. As described above, the Nasdaq and NYSE products each provide “total volume” which is equivalent to the buy volume as proposed in the Short Volume Report. The only difference between the proposal and the NYSE and Nasdaq data points is that the proposed Short Volume Report includes only information related to trades executed on the Exchange, whereas the NYSE and Nasdaq includes only information

<sup>32</sup> See Nasdaq Pricing Schedule, Section 152(a).

<sup>33</sup> See <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>.

<sup>34</sup> *Supra* note 4.

<sup>35</sup> See the NYSE Daily Short Volume Client Specification, Section 1, Introduction at [https://www.nyse.com/publicdocs/nyse/data/Daily\\_Short\\_Volume\\_Client\\_Spec\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/data/Daily_Short_Volume_Client_Spec_v1.3.pdf).

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 27.

<sup>38</sup> *Supra* note 4. Buy volume available on Cboe DataShop is equivalent to the proposed buy volume.

<sup>29</sup> *Id.*

<sup>30</sup> *Supra* note 4.

<sup>31</sup> *Supra* note 5.

related to trades executed on NYSE and Nasdaq, respectively, and their affiliates. Therefore, buy volume is a data point already provided for in other exchange products, and as such, the buy volume proposed by the Exchange presents no unique issues.

#### Buy Trade Count

Trade count information for trades executed on the Exchange is currently publicly available via the SIP, as well as through reports on Cboe DataShop<sup>39</sup> and other vendors. Specifically, the Equity, ETF, and Index Trades product offered on Cboe DataShop provides trade price, trade size, trade condition, trading venue, and the National Best Bid and Offer (“NBBO”) for each trade record on a daily basis. Therefore, buy trade count for trades executed on the Exchange can be derived from the Equity, ETF, and Index Trades product by summing the number of trade records on BYX [sic] for the day. Accordingly, buy trade count is a data point already available to the public and thus present no new novel issues.

#### Sell Long Volume

As proposed, sell long volume represents the total share volume of all sell long order executions. The Exchange notes that other exchanges, such as NYSE, offer products with related data points that users can utilize to calculate sell long volume as contemplated by the proposed Short Volume Report. Specifically, the NYSE Daily Short Volume File provides the total volume (*i.e.*, the total share volume of all order executions) and the short volume (*i.e.*, the total share volume of all short order executions, which is the sum of all sell short, sell short exempt, and sell short with slide order executions).<sup>40</sup> Therefore, sell long information could be derived from the NYSE Daily Short Volume file by subtracting the short volume from the total volume. As such, sell long volume is not a data point unique only to the proposed Short Volume Report, and does not raise any novel issues or concerns.

#### Sell Long Trade Count

As proposed, sell long trade count represents the total trade count of all sell long order executions. Currently, this data can be derived using publicly available information available in the Short Sale Daily Reports which are available on the Cboe website,<sup>41</sup> and the

Equity, ETF, and Index Trades product available on Cboe DataShop.<sup>42</sup> Specifically, the Short Sale Daily Transaction report on the Cboe website reflects short sale executions on the Exchange as they appeared on the consolidated tape. Short sale and short sale exempt trade count information can be determined summing the total number of transactions identified in the Short Sale Daily Transaction report. Long sale trade count could then be determined by subtracting the short sale transaction count from the buy trade count, which can be obtained from Cboe DataShop<sup>43</sup> as described above. Because sell long trade count can be calculated from existing publicly available information it presents no novel issues.

#### Sell Short Volume and Sell Short Exempt Volume

The sell short volume and sell short exempt volume in the proposed Short Volume Report is similar to a data point currently offered through NYSE’s Daily Short Volume file. Specifically, the NYSE Daily Short Volume file includes both short volume and sell short exempt volume for shares executed on NYSE and its affiliates.<sup>44</sup> Accordingly, the provision of separate sell short volume and sell short exempt volume is not without precedent. The only difference in the data from the NYSE Daily Short Volume file and the proposed data is that the NYSE report includes only information related to trades executed on the NYSE affiliated exchanges, whereas the Short Volume Report includes only information related to trades executed on the Exchange.

#### Sell Short Trade Count and Sell Short Exempt Trade Count

As noted above, the Short Volume Report will include both a sell short trade count and a sell short exempt trade count. The sell short trade count is equal to the total trade count of sell short order executions. The short sell exempt trade count is equal to the total trade count of sell short exempt orders.

Today, sell short and sell short exempt trade counts are not available or easily derivable in existing market data products or publicly available information. However, the Short Sale Daily Transaction report available on the Cboe website<sup>45</sup> provides a short sale trade count consisting of combined sell short and sell short exemptions. The Exchange believes that bifurcating sell short trade counts and sell short exempt

trade counts will benefit investors by providing insight into the risk environment around a security subject to the restrictions of Regulation SHO Rule 201.<sup>46</sup> As a general matter, when a security becomes subject to the short sale price restrictions of Rule 201, it is because that security’s price is experiencing extreme downward price pressure. In adopting Rule 201, the Commission believed it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline. A sale order shall be marked “short exempt” only if the provisions of Rule 201(c) or 201(d) are met.<sup>47</sup> Rule 201(c), for example, generally allows a broker-dealer to mark a sale “short exempt” if the broker-dealer identifies the order as being at a price above the current national best bid at the time of submission of the order to a trading center. In part, the Commission believed that Rule 201 would effectively restrict short sellers from participating as liquidity takers when Rule 201 is in effect, and instead act as liquidity providers, adding depth to the market, as short sale orders will be executed only when purchasers arrive willing to buy at prices above the national best bid.<sup>48</sup>

In this sense, by having the ability to ascertain specific short exempt trade counts, subscribers may be better able to assess the qualitative nature of sell side activity in a particular security. A marked increase or decrease in short exempt trade count can perhaps indicate whether investors are willing to pay a higher price for a security, rather than seek buying opportunities at lower prices as the stock continues to decline. Therefore, the Exchange believes the proposal will provide greater benefits to subscribers compared to what is currently available on the Cboe website, and does not represent a significant departure from information that is currently available.

Furthermore, similar data points are derivable from the NYSE’s Monthly Short Sales file, which provides a record of every short sale transaction for each security traded on the NYSE affiliated exchanges during the month.<sup>49</sup> Specifically, the NYSE Monthly Short

<sup>39</sup> *Supra* note 4. For purposes of this proposal, the trade size data point from Cboe DataShop is the same as the proposed buy volume data point.

<sup>40</sup> *Supra* note 27.

<sup>41</sup> *Supra* note 5.

<sup>42</sup> *Supra* note 4.

<sup>43</sup> *Id.*

<sup>44</sup> *Supra* note 27.

<sup>45</sup> *Supra* note 5.

<sup>46</sup> 17 CFR 242.201.

<sup>47</sup> 17 CFR 242.200(g)(2).

<sup>48</sup> *Id.* at 58.

<sup>49</sup> See the NYSE Monthly Short Sales Client Specification, Section 1, Introduction, at [https://www.nyse.com/publicdocs/nyse/Monthly\\_Short\\_Sales\\_Spec\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/Monthly_Short_Sales_Spec_v1.3.pdf).

Sale file includes a “short type” indicator for each transaction that indicates whether the short sale is short sale exempt or not short sale exempt and also includes the size of each transaction.<sup>50</sup> Therefore, subscribers to the NYSE Monthly Short Sales file can determine the sell short trade counts and sell short exempt trade counts by summing the number of each transaction on a given day during the prior month. Although the NYSE Monthly Short Sale file provides similar data points to that proposed here, such information is available on a monthly basis rather than a daily basis.

Nonetheless, as proposed the sell short and sell short exempt trade counts would be available to subscribers on an end-of-day basis it is not designed to provide information for which subscribers would make intraday trading decisions. Therefore, the Exchange does not believe the proposed data points would provide subscribers with an unfair advantage over other market participants. The Exchange believes the proposal strikes an appropriate balance in providing useful information to subscribers that is not a significant departure from existing information, but does not provide subscribers with sensitive information for which subscribers would make intraday trading decisions.

In sum, except for short sale and short sale exempt trade counts, each of the data points included in the proposed Short Volume Report are currently either available or derivable from a product of a competitor exchange or are publicly available. The Exchange seeks to gather information from each of these separate data points and compile such information into a useful format such as the proposed Short Volume Report. The Exchange believes that the proposed product will benefit market participants because consolidating the aforementioned data points in a single data product will allow market participants to more easily understand the changing risk environment on a daily basis and allow for more informed trading decisions. The information included in the proposed Short Volume Report will be provided on an end-of-day basis and will not provide information on an intraday basis. Nonetheless, subscribers will have access to not only the current end-of-day Short Volume Report, but historical end-of-day reports dating back to January 2, 2015. As such, the Exchange believes the proposal will provide subscribers with valuable information that may help in identifying historical

price trends and short sale activity in a specific security. The proposal provides trade volume and trade count information but provides nothing to indicate who is responsible for selling pressure in a given security. Further, the proposal only provides information as it relates to transactions and provides no order information. Given this, combined with the general availability of the information comprising the Short Volume Report, the Exchange does not believe that the proposed Short Volume Report provides users or subscribers with sensitive trading information or an unfair competitive advantage.

Finally, as noted above the proposed Short Sale Report is a completely voluntary product, and participants are not required to subscribe to the Short Volume Report. Moreover, the Short Volume Report is available to all potential users, regardless of size. Therefore, the Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory.

The Exchange believes the proposal to change the name of Rule 13.8 to “Data Products” is reasonable because the proposed Short Volume Report is not a book feed, and thus “EDGX Book Feeds” does not accurately describe all of the paragraphs under Rule 13.8. The Exchange also believes the proposal to add the preamble to Rule 13.8 is reasonable because it will eliminate potential investor confusion as to which data products the Exchange charges a fee. Furthermore, both of the aforementioned changes to Rule 13.8 are identical to the text of BZX and BYX Rule 11.22.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product that provides data similar to that offered by other competitor equities exchanges or data that is currently publicly available via the SIP, the Cboe website or DataShop, or other vendors. Any differences in the proposed product to similar products offered by competing exchanges are intended to better understand the changing risk environment on a daily basis. The Exchange is proposing to introduce the Short Volume Report in order to keep pace with changes in the industry and evolving customer needs and believes this proposed rule change would

contribute to robust competition among national securities exchanges. Further, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Short Volume Report will be available equally to all Members and non-Members that choose to subscribe to such report. As stated, the Short Volume Report is optional and Members and non-Members may choose to subscribe, or not, based on their view of the additional benefits and added value provided by utilizing the Short Volume Report. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2021-049 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGX-2021-049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

<sup>50</sup> *Id.*

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2021-049, and should be submitted on or before May 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-09049 Filed 4-27-22; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94780; File No. SR-BOX-2022-14]

### Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Reorganize Various Fees Within the Exchange Fee Schedule

April 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 8, 2022, BOX Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reorganize various fees within the Exchange Fee Schedule. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at <http://boxoptions.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to reorganize various fees within the Exchange's Fee Schedule. The reorganized Exchange Fee Schedule reflects the current fees, which remain unchanged.

The Exchange is proposing to organize the Exchange Fee Schedule by grouping certain fees together. Specifically, the Exchange is proposing that the fees that are not related to trading activity on a facility of the Exchange would be grouped together in the first three sections of the Exchange Fee Schedule.<sup>3</sup> The first three sections of fees are not transactional based fees applicable to a facility of the Exchange, BOX Options Market, an options trading facility of the Exchange under 3(a)(2) of the Exchange Act.<sup>4</sup> Following that, Sections IV-VII of the Exchange Fee Schedule<sup>5</sup> will include fees that are

specific to activity on the BOX Options Market ("BOX"). The last section, Section VIII,<sup>6</sup> applies to billing generally, including aggregate billing and billing disputes. BSTX fees will be filed as a separate rule filing from this proposal.

The Exchange believes that this proposed reorganization of the Exchange Fee Schedule provides a clearer structure. As part of the reorganization, the Exchange is adding a section header with a corresponding description,<sup>7</sup> adding clarifying detail throughout the Exchange Fee Schedule, and making conforming changes throughout to reflect the renumbered sections. In addition, the Exchange is amending Section VIII by replacing "BOX" with the "Exchange" where it references the Fee Schedule to add clarity to the section. Further, the Exchange is reordering the fees in the Regulatory Fee Section but not proposing to amend or alter any of the fees in the Regulatory Fee Section. The Exchange believes that these proposed changes make the Exchange Fee Schedule easier to read and provides clarity to the end-user on the fees of the Exchange.

The Exchange is proposing to clarify that the fees outlined in Sections IV-VII are transactional based fees applicable to BOX Options Market.<sup>8</sup> To clarify the nature of these fees and avoid any potential confusion, the Exchange is including a section header and description for Sections IV-VII that explains the fees are directly related to the BOX Options Market. The Exchange is also making conforming changes throughout the Fee Schedule to reflect these changes. The Exchange notes that these changes are purely clerical and do not amend any fee or rebate in the Exchange Fee Schedule.

The Exchange is also proposing to move all the footnotes in the Exchange Fee Schedule to endnotes. The Exchange believes this change simplifies the Exchange Fee Schedule, makes it easier to read, and is similar to how other exchanges organize their fee schedules.<sup>9</sup> Lastly, the Exchange is making non-substantive clean-up changes to add precision to the rulebook

<sup>3</sup> See Section I (Participant Fees), Section II (Regulatory Fees), and Section III (Technology Fees).

<sup>4</sup> BOX is currently the only facility of the Exchange that is actively trading. The rules for the Exchange's other proposed facility, BSTX LLC, were recently approved by the SEC (See Securities Exchange Act Release No. 94092 (January 27, 2022), 87 FR 5881 (February 2, 2022)).

<sup>5</sup> See Section IV (Electronic Transaction Fees), Section V (Manual Transaction Fees), Section VI (Complex Order Transaction Fees), and Section VII (Eligible Orders Routed to an Away Exchange).

<sup>6</sup> See Section VIII (Exchange Billing).

<sup>7</sup> See proposed new preamble to Sections IV-VII of the Exchange Fee Schedule, and revised title for Section VIII.

<sup>8</sup> Section VII covers fees for orders routed to an away exchange from BOX. Although these fees do not apply to transactions that occur directly on BOX, they nonetheless are directly related to options transactions. Therefore, the Exchange believes it is appropriate to group them with the other transactional based fees for BOX Options Market.

<sup>9</sup> See Cboe Exchange, Inc. Fee Schedule.

<sup>51</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

and facilitate better understanding of the Exchange's rulebook. The Exchange believes that these changes will make the Exchange Fee Schedule clearer and more consistent for the end user.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,<sup>10</sup> in general, and Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by reorganizing the Exchange Fee Schedule in such a way that makes the fees easy to locate by grouping certain fees together. The Exchange also believes that enhancing the section titles, by renaming certain sections, adding section headers, and including clarifying details, provides greater clarity to the Exchange Fee Schedule and allows Participants to more readily locate and understand the applicability of fees within the Exchange Fee Schedule and improves the structure of the Fee Schedule. The Exchange believes that these proposed changes, to make clarifying and non-substantive edits, will provide greater clarity to Participants and the public regarding the Exchange Fee Schedule and that it is in the public interest for the Exchange Fee Schedule to be clear so as to eliminate the potential for confusion. As such, the Exchange believes the proposed rule change is in the public interest, and therefore, consistent with the Act.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The proposed rule change is not a competitive filing but rather is designed to reorganize the Exchange Fee Schedule. In addition, the Exchange does not believe the proposal will impose any burden on inter-market or intra-market competition as the proposal does not address any competitive issues and does not change any fees currently in the Exchange Fee Schedule.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so it can immediately reflect the proposed organizational changes to its Fee Schedule. The Commission is waiving the 30-day operative delay as the proposal raises no new or novel issue and waiving the operative delay is thereby consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2022-14 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-BOX-2022-14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BOX-2022-14 and should be submitted on or before May 19, 2022.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78ff(b).

<sup>11</sup> 15 U.S.C. 78ff(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94782; File No. SR-CboeEDGA-2021-025]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report, Modify the Name of Rule 13.8 to “Data Products”, and Add a Preamble to Rule 13.8

April 22, 2022.

On November 17, 2021, Cboe EDGA Exchange, Inc. (“EDGA” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.<sup>4</sup> On January 20, 2022, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> On March 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.<sup>8</sup>

On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 to the proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the “Exchange” or “EDGA”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt Exchange Rule 13.8(h) to introduce a new data product to be known as the Short Volume Report, modify the name of Rule 13.8 to “Data Products”, and add a preamble to Rule 13.8. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/equities/regulation/rule_filings/edga/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

This Amendment No. 1 to SR-EDGA-2021-025 amends and replaces in its entirety the proposal as originally submitted on November 17, 2021. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to adopt Rule 13.8(h) to provide for a new data product to be known as the Short

Volume Report. The proposal introduces the Short Volume Report which will be available for purchase to EDGA Members (“Members”)<sup>9</sup> and non-Members. The Exchange notes that the proposed Short Volume Report generally consists of information similar to that included in various data products offered by the Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange LLC (“NYSE”), and/or information that is currently available or determinable from other publicly available sources such as Cboe DataShop,<sup>10</sup> the Cboe website,<sup>11</sup> or the CTA and UTP feeds made available by the Securities Information Processor (“SIP”), the only exception being the proposed transaction counts related to sell short and sell short exempt.

A description of each market data product offered by the Exchange is described in Exchange Rule 13.8. The Exchange proposes to amend Rule 13.8(h) to introduce and add a description of the Short Volume Report. The Exchange proposes to describe the Short Volume Report as “an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all shares for buy, sell, sell short, and sell short exempt trades.”<sup>12</sup> Specifically, the end-of-day report will include the following information: trade date,<sup>13</sup> symbol,<sup>14</sup> total volume,<sup>15</sup> buy volume,<sup>16</sup> buy trade count,<sup>17</sup> sell long volume,<sup>18</sup> sell long

<sup>9</sup> See Exchange Rule 1.5(n).

<sup>10</sup> See Equity and ETF Trades Data | Subscription ([cboe.com](http://cboe.com)).

<sup>11</sup> See Cboe EDGA U.S. Equities Exchange Short Sale Reports.

<sup>12</sup> Information provided in the report includes only trade data, and does not include order data.

<sup>13</sup> Trade date refers to the date of trading activity.

<sup>14</sup> Symbol refers to the Cboe formatted symbol in which the trading activity occurred. See [https://cdn.cboe.com/resources/\\_Symbolology\\_Reference.pdf](https://cdn.cboe.com/resources/_Symbolology_Reference.pdf).

<sup>15</sup> Total volume is the total share volume of all buy, sell long, sell short, and sell short exempt order executions and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume.

<sup>16</sup> Buy volume is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume.

<sup>17</sup> Buy trade count is the total trade count of all buy order executions and is equal to the sum of sell long trade count, sell short trade count, and sell short exempt trade count.

<sup>18</sup> Sell long volume is the total share volume of all sell long order executions.

<sup>17</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 93694 (December 1, 2021), 86 FR 69299. The comment letters received on the proposed rule change are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboeedga-2021-025/sr-cboeedga2021025.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 94007, 87 FR 4072 (January 26, 2022). The Commission designated March 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 94367, 87 FR 14058 (March 11, 2022).

trade count,<sup>19</sup> sell short volume,<sup>20</sup> sell short trade count,<sup>21</sup> sell short exempt volume,<sup>22</sup> and sell short exempt trade count.<sup>23</sup> As discussed in further detail below, the Exchange notes that, with the exception of short sale and short sale exempt transaction counts, all components of the proposed Short Volume Report are either data points similar to those provided by NYSE and Nasdaq,<sup>24</sup> and/or attainable from existing publicly available data sources such as the SIP, the Cboe website, or Cboe DataShop. The Exchange believes that the consolidation and presentation of data as proposed in the Short Volume Report will benefit market participants because such report will allow market participants to better discern whether daily sell activity is long or short, or sell short exempt. Such insight may aid participants in better understanding the changing risk environment on a daily basis.

The Short Volume Report will be available for purchase<sup>25</sup> on a monthly subscription basis and both Members and non-Member subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the Post-Closing Session.<sup>26</sup> Additionally, historical Short Volume Reports dating as far back as January 2, 2015 will be available for purchase on an ad hoc basis in monthly increments. The subscription files and historical files will include the same data points. Lastly, the Exchange notes the proposed product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may subscribe to it only if they voluntarily choose to do so.

Based on the above proposal, the Exchange also proposes to amend the

name of Rule 13.8 from “EDGA Book Feeds” to “Data Products”. Such an amendment would accurately describe the Rule as the proposed product is not a book feed, but rather a data product. Further, the existing data feeds identified in Rule 13.8 are also data products. The Exchange also proposes to add the following preamble to Rule 13.8: “The Exchange offers the following data products free of charge, unless otherwise noted in the Exchange’s fee schedule”. The proposed language conforms to rule text provided in Cboe BZX Exchange, Inc. (“BZX”) and Cboe BYX Exchange, Inc. (“BYX”) Rules 11.22.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>27</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>28</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>29</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. In this regard, the Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased

transparency of short sale data, which benefits investors by fostering better informed trading.

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As noted above, aside from the proposed sell short and sell short exempt transaction counts, the proposed Short Volume Report consists of information similar to that included in various data products offered Nasdaq and NYSE, and/or information that is available or determinable from other publicly available sources such as Cboe DataShop,<sup>30</sup> the Cboe website,<sup>31</sup> or the SIP. The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of the proposal.

## Trade Date and Symbol

The proposed data points for trade date and symbol are generally available from numerous data sources, such as the Nasdaq Daily Short Sale Volume files. The Nasdaq Daily Short Sale Volume files “reflect the aggregate number of shares executed on the Nasdaq market during regular trading hours on a daily basis. At the security level, Nasdaq will show the volume for executed short sale trades, as well as the total trading volume for the Nasdaq market.”<sup>32</sup> Specifically, the Nasdaq Daily Short Sale Volume files provide the date, which is defined as the trade date of a transaction, and the symbol, which is defined as the trading symbol, for trading activity on Nasdaq.<sup>33</sup> As proposed, the Exchange seeks to provide trade date and symbol information consistent with how the Nasdaq Daily

<sup>19</sup> Sell long trade count is the total trade count of all sell long order executions.

<sup>20</sup> Sell short volume is the total share volume of all sell short order executions and will not include sell short exempt volume.

<sup>21</sup> Sell short trade count is the total trade count of all sell short order executions and will not include short sale exempt trades.

<sup>22</sup> Sell short exempt volume is the total share volume of all sell short exempt order executions.

<sup>23</sup> Sell short exempt trade count is the total trade count of all sell short exempt order executions.

<sup>24</sup> The Exchange notes that Nasdaq’s comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume and trade counts executed on EDGA. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

<sup>25</sup> The Exchange intends to submit a separate rule filing to adopt fees for the Short Volume Report product.

<sup>26</sup> See Exchange Rule 1.5(r).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> *Id.*

<sup>30</sup> *Supra* note 4.

<sup>31</sup> *Supra* note 5.

<sup>32</sup> See Nasdaq Pricing Schedule, Section 152(a).

<sup>33</sup> See <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>.

Short Volume files capture these data points.

#### Total Volume

As noted above, the proposed total volume data point is equal to the sum of all buy, sell, sell short, and sell short exempt trades. The Exchange notes that the proposed total volume data point can be derived from the SIP, as well through information made available through reports on Cboe DataShop<sup>34</sup> or other vendors.

Additionally, the proposed total volume data point is similar in nature to that offered in the NYSE Daily Short Volume file and Nasdaq Daily Short Sale file. The NYSE Daily Short Volume file provides a daily summary report of short sale volume for every equity symbol traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the “NYSE affiliated exchanges”) during the day.<sup>35</sup> NYSE describes total volume as “the total share volume of all order executions.”<sup>36</sup> Similarly, the Nasdaq Daily Short Sale Volume file provides total volume, which is described as the “[a]ggregate reported share volume of executed short sale trades during regular trading hours.”<sup>37</sup> As noted above, the proposed Short Volume Report will include total volume comprised of the total share volume of all buy, sell long, sell short, and sell short exempt order executions, and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume. Therefore, the proposed total volume represents both the buy-side and sell-side of each execution. In contrast, the NYSE and Nasdaq products represent total volume as one side of the execution (e.g., the buy-side of each execution or the total share volume of the executions). Thus, information similar to the Exchange’s total volume could be determined by simply doubling the total volume identified in the NYSE Daily Short Volume file or the Nasdaq Short Sale Volume file. Given this, the proposed total volume is a data point already available to the public, and raises no novel issues. Furthermore, the Exchange believes that providing the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume as proposed will serve as an integrity check for each of the volume fields. Specifically, if total volume does *not*

equal the sum of the aforementioned volume fields, subscribers could easily identify a potential error in the data. Therefore, the Exchange believes the data point as proposed may provide greater benefits to subscribers than similar data points offered in competing products.

#### Buy Volume

The proposed buy volume data point is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume. Exchange buy volume is publicly available via the SIP, as well as through reports on Cboe DataShop<sup>38</sup> and other vendors.

Additionally, the NYSE Daily Short Sale file and Nasdaq Daily Short Volume file currently provides similar information. As described above, the Nasdaq and NYSE products each provide “total volume” which is equivalent to the buy volume as proposed in the Short Volume Report. The only difference between the proposal and the NYSE and Nasdaq data points is that the proposed Short Volume Report includes only information related to trades executed on the Exchange, whereas the NYSE and Nasdaq includes only information related to trades executed on NYSE and Nasdaq, respectively, and their affiliates. Therefore, buy volume is a data point already provided for in other exchange products, and as such, the buy volume proposed by the Exchange presents no unique issues.

#### Buy Trade Count

Trade count information for trades executed on the Exchange is currently publicly available via the SIP, as well as through reports on Cboe DataShop<sup>39</sup> and other vendors. Specifically, the Equity, ETF, and Index Trades product offered on Cboe DataShop provides trade price, trade size, trade condition, trading venue, and the National Best Bid and Offer (“NBBO”) for each trade record on a daily basis. Therefore, buy trade count for trades executed on the Exchange can be derived from the Equity, ETF, and Index Trades product by summing the number of trade records on BYX [sic] for the day. Accordingly, buy trade count is a data point already available to the public and thus present no new novel issues.

#### Sell Long Volume

As proposed, sell long volume represents the total share volume of all sell long order executions. The Exchange notes that other exchanges, such as NYSE, offer products with related data points that users can utilize to calculate sell long volume as contemplated by the proposed Short Volume Report. Specifically, the NYSE Daily Short Volume File provides the total volume (*i.e.*, the total share volume of all order executions) and the short volume (*i.e.*, the total share volume of all short order executions, which is the sum of all sell short, sell short exempt, and sell short with slide order executions).<sup>40</sup> Therefore, sell long information could be derived from the NYSE Daily Short Volume file by subtracting the short volume from the total volume. As such, sell long volume is not a data point unique only to the proposed Short Volume Report, and does not raise any novel issues or concerns.

#### Sell Long Trade Count

As proposed, sell long trade count represents the total trade count of all sell long order executions. Currently, this data can be derived using publicly available information available in the Short Sale Daily Reports which are available on the Cboe website,<sup>41</sup> and the Equity, ETF, and Index Trades product available on Cboe DataShop.<sup>42</sup> Specifically, the Short Sale Daily Transaction report on the Cboe website reflects short sale executions on the Exchange as they appeared on the consolidated tape. Short sale and short sale exempt trade count information can be determined summing the total number of transactions identified in the Short Sale Daily Transaction report. Long sale trade count could then be determined by subtracting the short sale transaction count from the buy trade count, which can be obtained from Cboe DataShop<sup>43</sup> as described above. Because sell long trade count can be calculated from existing publicly available information it presents no novel issues.

#### Sell Short Volume and Sell Short Exempt Volume

The sell short volume and sell short exempt volume in the proposed Short Volume Report is similar to a data point currently offered through NYSE’s Daily Short Volume file. Specifically, the NYSE Daily Short Volume file includes both short volume and sell short exempt

<sup>34</sup> *Supra* note 4.

<sup>35</sup> See the NYSE Daily Short Volume Client Specification, Section 1, Introduction at [https://www.nyse.com/publicdocs/nyse/data/\\_Short\\_Volume\\_Client\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/data/_Short_Volume_Client_v1.3.pdf).

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 27.

<sup>38</sup> *Supra* note 4. Buy volume available on Cboe DataShop is equivalent to the proposed buy volume.

<sup>39</sup> *Supra* note 4. For purposes of this proposal, the trade size data point from Cboe DataShop is the same as the proposed buy volume data point.

<sup>40</sup> *Supra* note 27.

<sup>41</sup> *Supra* note 5.

<sup>42</sup> *Supra* note 4.

<sup>43</sup> *Id.*

volume for shares executed on NYSE and its affiliates.<sup>44</sup> Accordingly, the provision of separate sell short volume and sell short exempt volume is not without precedent. The only difference in the data from the NYSE Daily Short Volume file and the proposed data is that the NYSE report includes only information related to trades executed on the NYSE affiliated exchanges, whereas the Short Volume Report includes only information related to trades executed on the Exchange.

#### Sell Short Trade Count and Sell Short Exempt Trade Count

As noted above, the Short Volume Report will include both a sell short trade count and a sell short exempt trade count. The sell short trade count is equal to the total trade count of sell short order executions. The short sell exempt trade count is equal to the total trade count of sell short exempt orders.

Today, sell short and sell short exempt trade counts are not available or easily derivable in existing market data products or publicly available information. However, the Short Sale Daily Transaction report available on the Cboe website<sup>45</sup> provides a short sale trade count consisting of combined sell short and sell short exemptions. The Exchange believes that bifurcating sell short trade counts and sell short exempt trade counts will benefit investors by providing insight into the risk environment around a security subject to the restrictions of Regulation SHO Rule 201.<sup>46</sup> As a general matter, when a security becomes subject to the short sale price restrictions of Rule 201, it is because that security's price is experiencing extreme downward price pressure. In adopting Rule 201, the Commission believed it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline. A sale order shall be marked "short exempt" only if the provisions of Rule 201(c) or 201(d) are met.<sup>47</sup> Rule 201(c), for example, generally allows a broker-dealer to mark a sale "short exempt" if the broker-dealer identifies the order as being at a price above the current national best bid at the time of submission of the order to a trading center. In part, the Commission believed that Rule 201 would effectively restrict

short sellers from participating as liquidity takers when Rule 201 is in effect, and instead act as liquidity providers, adding depth to the market, as short sale orders will be executed only when purchasers arrive willing to buy at prices above the national best bid.<sup>48</sup>

In this sense, by having the ability to ascertain specific short exempt trade counts, subscribers may be better able to assess the qualitative nature of sell side activity in a particular security. A marked increase or decrease in short exempt trade count can perhaps indicate whether investors are willing to pay a higher price for a security, rather than seek buying opportunities at lower prices as the stock continues to decline. Therefore, the Exchange believes the proposal will provide greater benefits to subscribers compared to what is currently available on the Cboe website, and does not represent a significant departure from information that is currently available.

Furthermore, similar data points are derivable from the NYSE's Monthly Short Sales file, which provides a record of every short sale transaction for each security traded on the NYSE affiliated exchanges during the month.<sup>49</sup> Specifically, the NYSE Monthly Short Sale file includes a "short type" indicator for each transaction that indicates whether the short sale is short sale exempt or not short sale exempt and also includes the size of each transaction.<sup>50</sup> Therefore, subscribers to the NYSE Monthly Short Sales file can determine the sell short trade counts and sell short exempt trade counts by summing the number of each transaction on a given day during the prior month. Although the NYSE Monthly Short Sale file provides similar data points to that proposed here, such information is available on a monthly basis rather than a daily basis. Nonetheless, as proposed the sell short and sell short exempt trade counts would be available to subscribers on an end-of-day basis it is not designed to provide information for which subscribers would make intraday trading decisions. Therefore, the Exchange does not believe the proposed data points would provide subscribers with an unfair advantage over other market participants. The Exchange believes the proposal strikes an appropriate balance in providing useful information to subscribers that is not a

significant departure from existing information, but does not provide subscribers with sensitive information for which subscribers would make intraday trading decisions.

In sum, except for short sale and short sale exempt trade counts, each of the data points included in the proposed Short Volume Report are currently either available or derivable from a product of a competitor exchange or are publicly available. The Exchange seeks to gather information from each of these separate data points and compile such information into a useful format such as the proposed Short Volume Report. The Exchange believes that the proposed product will benefit market participants because consolidating the aforementioned data points in a single data product will allow market participants to more easily understand the changing risk environment on a daily basis and allow for more informed trading decisions. The information included in the proposed Short Volume Report will be provided on an end-of-day basis and will not provide information on an intraday basis. Nonetheless, subscribers will have access to not only the current end-of-day Short Volume Report, but historical end-of-day reports dating back to January 2, 2015. As such, the Exchange believes the proposal will provide subscribers with valuable information that may help in identifying historical price trends and short sale activity in a specific security. The proposal provides trade volume and trade count information but provides nothing to indicate who is responsible for selling pressure in a given security. Further, the proposal only provides information as it relates to transactions and provides no order information. Given this, combined with the general availability of the information comprising the Short Volume Report, the Exchange does not believe that the proposed Short Volume Report provides users or subscribers with sensitive trading information or an unfair competitive advantage.

Finally, as noted above the proposed Short Sale Report is a completely voluntary product, and participants are not required to subscribe to the Short Volume Report. Moreover, the Short Volume Report is available to all potential users, regardless of size. Therefore, the Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory.

The Exchange believes the proposal to change the name of Rule 13.8 to "Data Products" is reasonable because the proposed Short Volume Report is not a book feed, and thus "EDGA Book

<sup>44</sup> *Supra* note 27.

<sup>45</sup> *Supra* note 5.

<sup>46</sup> 17 CFR 242.201.

<sup>47</sup> 17 CFR 242.200(g)(2).

<sup>48</sup> *Id.* at 58.

<sup>49</sup> See the NYSE Monthly Short Sales Client Specification, Section 1, Introduction, at [https://www.nyse.com/publicdocs/nyse/data/Monthly\\_Short\\_Sales\\_Client\\_Spec\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3.pdf).

<sup>50</sup> *Id.*

Feeds” does not accurately describe all of the paragraphs under Rule 13.8. The Exchange also believes the proposal to add the preamble to Rule 13.8 is reasonable because it will eliminate potential investor confusion as to which data products the Exchange charges a fee. Furthermore, both of the aforementioned changes to Rule 13.8 are identical to the text of BZX and BYX Rule 11.22.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product that provides data similar to that offered by other competitor equities exchanges or data that is currently publicly available via the SIP, the Cboe website or DataShop, or other vendors. Any differences in the proposed product to similar products offered by competing exchanges are intended to better understand the changing risk environment on a daily basis. The Exchange is proposing to introduce the Short Volume Report in order to keep pace with changes in the industry and evolving customer needs and believes this proposed rule change would contribute to robust competition among national securities exchanges. Further, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Short Volume Report will be available equally to all Members and non-Members that choose to subscribe to such report. As stated, the Short Volume Report is optional and Members and non-Members may choose to subscribe, or not, based on their view of the additional benefits and added value provided by utilizing the Short Volume Report. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2021-025 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeEDGA-2021-025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2021-025, and should be submitted on or before May 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-09048 Filed 4-27-22; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-94784; File No. SR-ICC-2022-005]

### **Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the ICC Clearing Rules**

April 22, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 13, 2022, ICE Clear Credit LLC (“ICC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, which Items have been prepared primarily by ICC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

#### **I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change**

The principal purpose of the proposed rule change is to implement certain amendments to the ICC Clearing Rules (the “Rules”) relating to implementation of Russia Sanctions (defined below).

#### **II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item III below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

<sup>51</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

*(a) Purpose*

The purpose of the proposed changes is to modify certain provisions of the Rules applicable to cleared CDS contracts (or components thereof) for which the Russian Federation is a reference entity, in light of the sanctions imposed by Directive 1A of February 22, 2022 (Prohibitions Related to Certain Sovereign Debt of the Russian Federation) under Executive Order 14024 of April 21, 2021 (Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation<sup>3</sup>) (together, the "Executive Order") and related implementing actions by the U.S. Treasury Department Office of Foreign Asset Control ("OFAC"), as well as similar sanctions imposed by sanctions authorities in Canada, the European Union, Japan, Switzerland and the United Kingdom (collectively, the "Russia Sanctions").

The amendments will incorporate in the terms and conditions for such contracts the Additional Provisions for Certain Russian Entities: Excluded Obligations and Excluded Deliverable Obligations, published by the International Swaps and Derivatives Association, Inc. ("ISDA") on March 25, 2022 (the "Russia Additional Provisions"). Consistent with the approach expected to be taken throughout the cleared and uncleared CDS market, ICE Clear Credit will make the Russia Additional Provisions applicable to relevant CDS contracts cleared by ICE Clear Credit beginning on the industry-wide implementation date (currently expected to be on or around April 25, 2022 (the "Additional Provisions Effective Date")). Accordingly, the amendments to the Rules will define the Additional Provisions Effective Date as April 25, 2022, or such later date as may be designated by ICE Clear Credit Circular.

Among other provisions, the Russia Sanctions prohibit secondary market transactions in or relating to certain bonds issued by the Russian Federation ("Restricted Debt"). The Russia Additional Provisions implement this prohibition by excluding Russia government bonds that are Restricted Debt from being "Obligations" or "Deliverable Obligations" under the terms of a CDS contract. As such, credit events with respect to such Restricted Debt could not be used to trigger credit protection under a CDS contract, and

such Restricted Debt could not be used in settlement of a CDS contract. Pursuant to the terms of the Russia Additional Provisions, these limitations would cease to apply at such time as no relevant sanctions apply to secondary trading in the relevant Restricted Debt.

ICE Clear Credit understands, through discussions with market participants, that market participants generally are expected to adhere to a protocol implementing the Russia Additional Provisions for existing contracts in the uncleared CDS market, effective as of the Additional Provisions Effective Date. In an effort to maintain consistency across the CDS market, ICE Clear Credit plans to implement the amendments discussed herein as of the same time.

ICE Clear Credit is proposing to amend its Rules to incorporate the Russia Additional Provisions into existing Contracts. ICE Clear Credit would amend Rule 26C–316, which applies to CDX.EM Contracts, an index CDS contract for which Russia may be an index component. New subsection (f) would provide that all open positions in CDX.EM Contracts that have a component transaction in which the Russian Federation is a Reference Entity will be amended, effective as of the Additional Provisions Effective Date, such that the Russia Additional Provisions apply. For clarity, the amendment would also update the transaction terms to reference the updated ISDA Credit Derivatives Physical Settlement Matrix with the Additional Provisions Effective Date that takes into account the Russia Additional Provisions.

Similarly, ICE Clear Credit is proposing to amend Rule 26D–616, which applies to emerging market sovereign single-name CDS contracts. New subsection (d) would provide that a sovereign single-name CDS contract referencing the Russian Federation will be amended, effective as of the Additional Provisions Effective Date, such that the Russia Additional Provisions apply. For clarity, the amendment would also update the transaction terms to reference the updated ISDA Credit Derivatives Physical Settlement Matrix with the Additional Provisions Effective Date that takes into account the Russia Additional Provisions.

*(b) Statutory Basis*

ICE Clear Credit believes that the proposed amendments are consistent with the requirements of Section 17A of the Act<sup>4</sup> and the regulations thereunder

applicable to it, including the standards under Rule 17Ad–22.<sup>5</sup> Section 17A(b)(3)(F) of the Act<sup>6</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. Consistent with this Section, the amendments revise the terms of single-name and index CDS contracts referencing the Russian Federation in order to implement the Russia Additional Provisions and comply with the relevant restrictions in the Russia Sanctions. In ICE Clear Credit's view, the amendments will therefore facilitate its ability to continue prompt and accurate clearing of such contracts, consistent with applicable law and the public interest as set out in the Executive Order and other Russia Sanctions.

Moreover, the amendments are consistent with Rule 17Ad–22(e)(1),<sup>7</sup> which requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions. As discussed herein, the amendments are designed to facilitate compliance by ICE Clear Credit and its clearing participants with the Russia Sanctions, by permitting clearing to continue in accordance with the restrictions on Restricted Debt imposed by the Russia Sanctions.

*(B) Clearing Agency's Statement on Burden on Competition*

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The changes will apply to all clearing participants and other market participants. The changes are being proposed in order to comply with the Russia Sanctions and are being made in conjunction with an industry-wide effort to amend relevant CDS contract terms. ICE Clear Credit does not believe the amendments will impact competition among clearing members or other market participants, affect the ability of market participants to access

<sup>3</sup> 86 FR 20249 (April 15, 2021).

<sup>4</sup> 15 U.S.C. 78q–1.

<sup>5</sup> 17 CFR 240.17Ad–22.

<sup>6</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>7</sup> 17 CFR 240.17Ad–22(e)(1).

clearing generally, or affect the cost of clearing. ICE Clear Credit further believes that any impact on clearing results from the restrictions imposed under the Russia Sanctions and is necessary and appropriate to ensure compliance with those restrictions.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Credit. ICE Clear Credit will notify the Commission of any comments received with respect to the proposed rule change.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2022-005 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2022-005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such

filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2022-005 and should be submitted on or before May 19, 2022.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>8</sup> For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>9</sup> and Rule 17Ad-22(e)(1) thereunder.<sup>10</sup>

*(A) Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICC be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>11</sup> Based on its review of the record, and for the reasons discussed below, the Commission believes the proposed rule change is consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

The Commission believes that the proposed rule change should help to assure compliance with the Russia Sanctions. The Commission believes that the proposed rule change should do so by incorporating the Russia Additional Provisions into cleared CDS contracts that reference the Russian Federation. As discussed above, the Russia Additional Provisions are designed to implement the Russia Sanctions by, among other things, excluding Russia government bonds that are Restricted Debt from being "Obligations" or "Deliverable Obligations" under the terms of a CDS contract.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>11</sup> 15 U.S.C. 78q-1(b)(3)(F).

The Commission believes that failure to comply with the Russia Sanctions could potentially result in legal liability and other consequences to ICC, like financial penalties. The Commission believes that such liability and penalties could impede ICC's operations and therefore its ability to clear and settle transactions. Moreover, the Commission believes that failure to comply with the Russia sanctions could specifically impede ICC's ability to process credit events and other transactions affecting CDS contracts that reference the Russian Federation. The Commission therefore believes that the proposed rule change, by helping assure compliance with the Russia Sanctions, is consistent with the promotion of the prompt and accurate clearance and settlement of transactions at ICC.

The Commission further believes that the proposed rule change should help to ensure consistency between cleared and uncleared CDS contracts. The Commission notes ICC's representation that market participants generally are expected to adhere to a protocol implementing the Russia Additional Provisions for existing contracts in the uncleared CDS market. The Commission believes that incorporating into cleared CDS contracts the Russia Additional Provisions should help to ensure that the CDS cleared at ICC are consistent with CDS in the uncleared market. The Commission further believes that doing so should help to ensure that ICC is able to accept such uncleared CDS if counterparties later submit them for clearing. In this way, the Commission believes the proposed rule change should promote the prompt and accurate clearance and settlement of transactions at ICC.

Therefore, the Commission finds that the proposed rule change is with Section 17A(b)(3)(F) of the Act.<sup>12</sup>

*(B) Consistency With Rule 17Ad-22(e)(1)*

Rule 17Ad-22(e)(1) requires that ICC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.<sup>13</sup> As discussed above, the Commission believes that the proposed rule change should help to assure compliance with the Russia Sanctions by incorporating the Russia Additional Provisions into cleared CDS contracts that reference the Russian Federation. The Commission further believes that

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>13</sup> 17 CFR 240.17Ad-22(e)(1).

failure to comply with the Russia Additional Provisions could potentially result in legal liability and other consequences to ICC and could impede the enforceability of cleared CDS that reference the Russian Federation. For example, if there was a credit event that triggered credit protection, then the Russian Sanctions could disrupt settlement of such CDS by prohibiting secondary market transactions in Restricted Debt. Such disrupted settlement could result in CDS buyers not receiving any credit protection payments, effectively making the CDS unenforceable. The Commission therefore believes that by assuring compliance with the Russian Sanctions, the proposed rule change should help assure that ICC's legal basis for clearing CDS contracts referencing the Russian Federation is well-founded and enforceable.

Therefore, the Commission finds that the proposed rule change is with Rule 17Ad-22(e)(1).<sup>14</sup>

#### *(C) Accelerated Approval of the Proposed Rule Change*

In its filing, ICC requests that the Commission grant accelerated approval of the proposed rule change pursuant to Section 19(b)(2)(C)(iii) of the Act.<sup>15</sup> Under Section 19(b)(2)(C)(iii) of the Act,<sup>16</sup> the Commission may grant accelerated approval of a proposed rule change if the Commission finds good cause for doing so. ICC believes that accelerated approval is warranted because incorporating the Russia Additional Provisions is necessary for the maintenance of fair and orderly markets in CDS contracts referencing the Russian Federation in light of the restrictions on Restricted Debt imposed under the Russia Sanctions. Moreover, ICC believes approving the proposed rule change on an accelerated basis is needed for ICC to stay consistent with the uncleared market, which plans to implement the new provisions on or around April 25, 2022. Finally, ICC represents that the proposed rule change will not affect the safeguarding of funds or securities in the custody or control of ICC or for which it is responsible.

The Commission finds good cause, pursuant to Section 19(b)(2)(C)(iii) of the Act,<sup>17</sup> for approving the proposed rule change on an accelerated basis prior to the 30th day after the date of publication of notice in the **Federal Register** because the proposed rule change is required to implement the

Russia Additional Provisions on or around April 25, 2022. As discussed above, the Commission believes that implementing the Russia Additional Provisions should help assure compliance with the Russia Sanctions, and therefore help avoid potential legal liability and disruptions to ICC's operations. The Commission further believes that implementing the Russia Additional Provisions on or around April 25, 2022 should help assure that ICC maintains a well-founded and enforceable legal basis for clearing CDS contracts that reference the Russian Federation. Finally, the Commission believes that implementing the Russia Additional Provisions on or around April 25, 2022 should help assure that ICC stays consistent with the uncleared market.

#### **V. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A(b)(3)(F) of the Act<sup>18</sup> and Rule 17Ad-22(e)(1)<sup>19</sup> thereunder.

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>20</sup> that the proposed rule change (SR-ICC-2022-005) be, and hereby is, approved on an accelerated basis.<sup>21</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2022-09042 Filed 4-27-22; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34 94729; File No. SR-BOX-2022-08]

### **Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 12140 (Imposition of Fines for Minor Rule Violations), To Expand the List of Violations Eligible for Disposition Under the Exchange's Minor Rule Violation Plan and Update the Fine Schedule Applicable to Certain Minor Rule Violations**

#### *Correction*

In notice document 2022-08481 beginning on page 23893 in the issue of Thursday, April 21, 2022, make the following correction:

On page 23903, in the third column, in the first paragraph, in the last line "April 21, 2022" should read "May 12, 2022".

[FR Doc. C1-2022-08481 Filed 4-27-22; 8:45 am]

**BILLING CODE 0099-10-D**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-94781; File No. SR-NYSEArca-2021-89]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Bitwise Bitcoin ETP Trust Under NYSE Arca Rule 8.201-E**

April 22, 2022.

On October 14, 2021, NYSE Arca, Inc. ("NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the Bitwise Bitcoin ETP Trust under NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on November 3, 2021.<sup>3</sup>

On December 15, 2021, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(1).

<sup>15</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>16</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>17</sup> 15 U.S.C. 78s(b)(2)(C)(iii).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 93445 (Oct. 28, 2021), 86 FR 60695. Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nysearca-2021-89/srnysearca202189.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On February 1, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup>

Section 19(b)(2) of the Act<sup>8</sup> provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on November 3, 2021.<sup>9</sup> The 180th day after publication of the proposed rule change is May 2, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>10</sup> designates July 1, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-NYSEArca-2021-89).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2022-09047 Filed 4-27-22; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>5</sup> See Securities Exchange Act Release No. 93790, 86 FR 72300 (Dec. 21, 2021).

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 94126, 87 FR 6903 (Feb. 7, 2022).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See *supra* note 3.

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</sup> 17 CFR 200.30-3(a)(57).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94788; File No. SR-CboeBZX-2021-078]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Introduce a New Data Product To Be Known as the Short Volume Report

April 22, 2022.

On November 17, 2021, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to amend Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The proposed rule change was published for comment in the **Federal Register** on December 7, 2021.<sup>4</sup> On January 20, 2022, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> On March 7, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.<sup>8</sup>

On March 30, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded the proposed rule change as originally filed. Amendment No. 1 to the proposed rule change is described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 93688 (December 1, 2021), 86 FR 69319. The comment letters received on the proposed rule change are available on the Commission’s website at: <https://www.sec.gov/comments/sr-cboebzx-2021-078/srcboebzx2021078.htm>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 94010, 87 FR 4075 (January 26, 2022). The Commission designated March 7, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> See Securities Exchange Act Release No. 94372, 87 FR 14053 (March 11, 2022).

### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to Exchange Rule 11.22(f) to introduce a new data product to be known as the Short Volume Report. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

This Amendment No. 1 to SR-BZX-2021-078 amends and replaces in its entirety the proposal as originally submitted on November 17, 2021. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to amend Rule 11.22(f) to provide for a new data product to be known as the Short Volume Report. The proposal introduces the Short Volume Report which will be available for purchase to BZX Members (“Members”)<sup>9</sup> and non-Members. The Exchange notes that the proposed Short Volume Report generally consists of information similar to that included in various data products offered by the Nasdaq Stock Market LLC (“Nasdaq”) and the New York Stock Exchange LLC (“NYSE”), and/or information that is currently available or determinable from other publicly available sources such as Cboe

<sup>9</sup> See Rule 1.5(n).

DataShop,<sup>10</sup> the Cboe website,<sup>11</sup> or the CTA and UTP feeds made available by the Securities Information Processor (“SIP”), the only exception being the proposed transaction counts related to sell short and sell short exempt.

A description of each market data product offered by the Exchange is described in Exchange Rule 11.22. The Exchange proposes to amend Rule 11.22(f) to introduce and add a description of the Short Volume Report. The Exchange proposes to describe the Short Volume Report as “an end-of-day report that summarizes certain equity trading activity on the Exchange, including trade count and volume by symbol for buy, sell long, sell short, and sell short exempt trades. The report also includes the total volume which represents the sum of all shares for buy, sell, sell short, and sell short exempt trades.”<sup>12</sup> Specifically, the end-of-day report will include the following information: Trade date,<sup>13</sup> symbol,<sup>14</sup> total volume,<sup>15</sup> buy volume,<sup>16</sup> buy trade count,<sup>17</sup> sell long volume,<sup>18</sup> sell long trade count,<sup>19</sup> sell short volume,<sup>20</sup> sell short trade count,<sup>21</sup> sell short exempt volume,<sup>22</sup> and sell short exempt trade count.<sup>23</sup> As discussed in further detail below, the Exchange notes that, with the exception of short sale and short sale exempt transaction counts, all components of the proposed Short Volume Report are either data points

similar to those provided by NYSE and Nasdaq,<sup>24</sup> and/or attainable from existing publicly available data sources such as the SIP, the Cboe website, or Cboe DataShop. The Exchange believes that the consolidation and presentation of data as proposed in the Short Volume Report will benefit market participants because such report will allow market participants to better discern whether daily sell activity is long or short, or sell short exempt. Such insight may aid participants in better understanding the changing risk environment on a daily basis.

The Short Volume Report will be available for purchase<sup>25</sup> on a monthly subscription basis and both Members and non-Member subscribers will receive a daily end-of-day file that will be delivered after the conclusion of the After Hours Trading Session.<sup>26</sup> Additionally, historical Short Volume Reports dating as far back as January 2, 2015 will be available for purchase on an ad hoc basis in monthly increments. The subscription files and historical files will include the same data points. Lastly, the Exchange notes the proposed product is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may subscribe to it only if they voluntarily choose to do so.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>27</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>28</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>29</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. In this regard, the Exchange believes that the proposed Short Volume Report would further broaden the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The proposal also promotes increased transparency of short sale data, which benefits investors by fostering better informed trading.

As noted above, aside from the proposed sell short and sell short exempt transaction counts, the proposed Short Volume Report consists of information similar to that included in various data products offered Nasdaq and NYSE, and/or information that is available or determinable from other publicly available sources such as Cboe DataShop,<sup>30</sup> the Cboe website,<sup>31</sup> or the SIP. The Exchange notes that short sale information that is available free of charge on the Cboe website will continue to be publicly available upon approval of the proposal.

## Trade Date and Symbol

The proposed data points for trade date and symbol are generally available from numerous data sources, such as the Nasdaq Daily Short Sale Volume files. The Nasdaq Daily Short Sale Volume files “reflect the aggregate number of shares executed on the Nasdaq market during regular trading hours on a daily basis. At the security level, Nasdaq will show the volume for executed short sale trades, as well as the total trading volume for the Nasdaq market.”<sup>32</sup> Specifically, the Nasdaq Daily Short Sale Volume files provide the date, which is defined as the trade date of a

<sup>10</sup> See Equity and ETF Trades Data | Subscription (cboe.com).

<sup>11</sup> See Cboe BZX U.S. Equities Exchange Short Sale Reports.

<sup>12</sup> Information provided in the report includes only trade data, and does not include order data.

<sup>13</sup> Trade date refers to the date of trading activity.

<sup>14</sup> Symbol refers to the Cboe formatted symbol in which the trading activity occurred. See [https://cdn.cboe.com/resources/\\_/\\_Symbology\\_Reference.pdf](https://cdn.cboe.com/resources/_/_Symbology_Reference.pdf).

<sup>15</sup> Total volume is the total share volume of all buy, sell long, sell short, and sell short exempt order executions and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume.

<sup>16</sup> Buy volume is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume.

<sup>17</sup> Buy trade count is the total trade count of all buy order executions and is equal to the sum of sell long trade count, sell short trade count, and sell short exempt trade count.

<sup>18</sup> Sell long volume is the total share volume of all sell long order executions.

<sup>19</sup> Sell long trade count is the total trade count of all sell long order executions.

<sup>20</sup> Sell short volume is the total share volume of all sell short order executions and will not include sell short exempt volume.

<sup>21</sup> Sell short trade count is the total trade count of all sell short order executions and will not include short sale exempt trades.

<sup>22</sup> Sell short exempt volume is the total share volume of all sell short exempt order executions.

<sup>23</sup> Sell short exempt trade count is the total trade count of all sell short exempt order executions.

<sup>24</sup> The Exchange notes that Nasdaq’s comparable product, the Daily Short Sale Volume file, reflects aggregate information across their affiliated equity exchanges. The Exchange is not proposing an aggregated Short Volume Report across its affiliated equity exchanges, and the proposal includes only volume and trade counts executed on BZX. As such, the volumes calculated on Nasdaq reports will differ from that in the proposed Short Volume Report.

<sup>25</sup> The Exchange intends to submit a separate rule filing to adopt fees for the Short Volume Report product.

<sup>26</sup> See Exchange Rule 1.5(c).

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> *Id.*

<sup>30</sup> *Supra* note 4.

<sup>31</sup> *Supra* note 5.

<sup>32</sup> See Nasdaq Pricing Schedule, Section 152(a).

transaction, and the symbol, which is defined as the trading symbol, for trading activity on Nasdaq.<sup>33</sup> As proposed, the Exchange seeks to provide trade date and symbol information consistent with how the Nasdaq Daily Short Volume files capture these data points.

#### Total Volume

As noted above, the proposed total volume data point is equal to the sum of all buy, sell, sell short, and sell short exempt trades. The Exchange notes that the proposed total volume data point can be derived from the SIP, as well through information made available through reports on Cboe DataShop<sup>34</sup> or other vendors.

Additionally, the proposed total volume data point is similar in nature to that offered in the NYSE Daily Short Volume file and Nasdaq Daily Short Sale file. The NYSE Daily Short Volume file provides a daily summary report of short sale volume for every equity symbol traded on NYSE, NYSE American LLC, NYSE Arca, Inc., NYSE National, Inc., and NYSE Chicago, Inc. (collectively, the “NYSE affiliated exchanges”) during the day.<sup>35</sup> NYSE describes total volume as “the total share volume of all order executions.”<sup>36</sup> Similarly, the Nasdaq Daily Short Sale Volume file provides total volume, which is described as the “[a]ggregate reported share volume of executed short sale trades during regular trading hours.”<sup>37</sup> As noted above, the proposed Short Volume Report will include total volume comprised of the total share volume of all buy, sell long, sell short, and sell short exempt order executions, and is equal to the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume. Therefore, the proposed total volume represents both the buy-side and sell-side of each execution. In contrast, the NYSE and Nasdaq products represent total volume as one side of the execution (e.g., the buy-side of each execution or the total share volume of the executions). Thus, information similar to the Exchange’s total volume could be determined by simply doubling the total volume identified in the NYSE Daily Short Volume file or the Nasdaq Short Sale Volume file. Given this, the proposed

total volume is a data point already available to the public, and raises no novel issues. Furthermore, the Exchange believes that providing the sum of buy volume, sell long volume, sell short volume, and sell short exempt volume as proposed will serve as an integrity check for each of the volume fields. Specifically, if total volume does *not* equal the sum of the aforementioned volume fields, subscribers could easily identify a potential error in the data. Therefore, the Exchange believes the data point as proposed may provide greater benefits to subscribers than similar data points offered in competing products.

#### Buy Volume

The proposed buy volume data point is the total share volume of all buy order executions and is equal to the sum of sell long volume, sell short volume, and sell short exempt volume. Exchange buy volume is publicly available via the SIP, as well as through reports on Cboe DataShop<sup>38</sup> and other vendors.

Additionally, the NYSE Daily Short Sale file and Nasdaq Daily Short Volume file currently provides similar information. As described above, the Nasdaq and NYSE products each provide “total volume” which is equivalent to the buy volume as proposed in the Short Volume Report. The only difference between the proposal and the NYSE and Nasdaq data points is that the proposed Short Volume Report includes only information related to trades executed on the Exchange, whereas the NYSE and Nasdaq includes only information related to trades executed on NYSE and Nasdaq, respectively, and their affiliates. Therefore, buy volume is a data point already provided for in other exchange products, and as such, the buy volume proposed by the Exchange presents no unique issues.

#### Buy Trade Count

Trade count information for trades executed on the Exchange is currently publicly available via the SIP, as well as through reports on Cboe DataShop<sup>39</sup> and other vendors. Specifically, the Equity, ETF, and Index Trades product offered on Cboe DataShop provides trade price, trade size, trade condition, trading venue, and the National Best Bid and Offer (“NBBO”) for each trade record on a daily basis. Therefore, buy trade count for trades executed on the

Exchange can be derived from the Equity, ETF, and Index Trades product by summing the number of trade records on BZX for the day. Accordingly, buy trade count is a data point already available to the public and thus present no new novel issues.

#### Sell Long Volume

As proposed, sell long volume represents the total share volume of all sell long order executions. The Exchange notes that other exchanges, such as NYSE, offer products with related data points that users can utilize to calculate sell long volume as contemplated by the proposed Short Volume Report. Specifically, the NYSE Daily Short Volume File provides the total volume (i.e., the total share volume of all order executions) and the short volume (i.e., the total share volume of all short order executions, which is the sum of all sell short, sell short exempt, and sell short with slide order executions).<sup>40</sup> Therefore, sell long information could be derived from the NYSE Daily Short Volume file by subtracting the short volume from the total volume. As such, sell long volume is not a data point unique only to the proposed Short Volume Report, and does not raise any novel issues or concerns.

#### Sell Long Trade Count

As proposed, sell long trade count represents the total trade count of all sell long order executions. Currently, this data can be derived using publicly available information available in the Short Sale Daily Reports which are available on the Cboe website,<sup>41</sup> and the Equity, ETF, and Index Trades product available on Cboe DataShop.<sup>42</sup> Specifically, the Short Sale Daily Transaction report on the Cboe website reflects short sale executions on the Exchange as they appeared on the consolidated tape. Short sale and short sale exempt trade count information can be determined summing the total number of transactions identified in the Short Sale Daily Transaction report. Long sale trade count could then be determined by subtracting the short sale transaction count from the buy trade count, which can be obtained from Cboe DataShop<sup>43</sup> as described above. Because sell long trade count can be calculated from existing publicly available information it presents no novel issues.

<sup>33</sup> See <https://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/ShortSaleFileSpecifications.pdf>.

<sup>34</sup> *Supra* note 4.

<sup>35</sup> See the NYSE Daily Short Volume Client Specification, Section 1, Introduction at [https://www.nyse.com/publicdocs/nyse/data/\\_Short\\_Volume\\_Client\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/data/_Short_Volume_Client_v1.3.pdf).

<sup>36</sup> *Id.*

<sup>37</sup> *Supra* note 27.

<sup>38</sup> *Supra* note 4. Buy volume available on Cboe DataShop is equivalent to the proposed buy volume.

<sup>39</sup> *Supra* note 4. For purposes of this proposal, the trade size data point from Cboe DataShop is the same as the proposed buy volume data point.

<sup>40</sup> *Supra* note 27.

<sup>41</sup> *Supra* note 5.

<sup>42</sup> *Supra* note 4.

<sup>43</sup> *Id.*

### Sell Short Volume and Sell Short Exempt Volume

The sell short volume and sell short exempt volume in the proposed Short Volume Report is similar to a data point currently offered through NYSE's Daily Short Volume file. Specifically, the NYSE Daily Short Volume file includes both short volume and sell short exempt volume for shares executed on NYSE and its affiliates.<sup>44</sup> Accordingly, the provision of separate sell short volume and sell short exempt volume is not without precedent. The only difference in the data from the NYSE Daily Short Volume file and the proposed data is that the NYSE report includes only information related to trades executed on the NYSE affiliated exchanges, whereas the Short Volume Report includes only information related to trades executed on the Exchange.

### Sell Short Trade Count and Sell Short Exempt Trade Count

As noted above, the Short Volume Report will include both a sell short trade count and a sell short exempt trade count. The sell short trade count is equal to the total trade count of sell short order executions. The short sell exempt trade count is equal to the total trade count of sell short exempt orders.

Today, sell short and sell short exempt trade counts are not available or easily derivable in existing market data products or publicly available information. However, the Short Sale Daily Transaction report available on the Cboe website<sup>45</sup> provides a short sale trade count consisting of combined sell short and sell short exemptions. The Exchange believes that bifurcating sell short trade counts and sell short exempt trade counts will benefit investors by providing insight into the risk environment around a security subject to the restrictions of Regulation SHO Rule 201.<sup>46</sup> As a general matter, when a security becomes subject to the short sale price restrictions of Rule 201, it is because that security's price is experiencing extreme downward price pressure. In adopting Rule 201, the Commission believed it was appropriate to adopt a short sale-related circuit breaker because, when triggered, it will prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline. A sale order shall be marked "short exempt" only if the provisions of

Rule 201(c) or 201(d) are met.<sup>47</sup> Rule 201(c), for example, generally allows a broker-dealer to mark a sale "short exempt" if the broker-dealer identifies the order as being at a price above the current national best bid at the time of submission of the order to a trading center. In part, the Commission believed that Rule 201 would effectively restrict short sellers from participating as liquidity takers when Rule 201 is in effect, and instead act as liquidity providers, adding depth to the market, as short sale orders will be executed only when purchasers arrive willing to buy at prices above the national best bid.<sup>48</sup>

In this sense, by having the ability to ascertain specific short exempt trade counts, subscribers may be better able to assess the qualitative nature of sell side activity in a particular security. A marked increase or decrease in short exempt trade count can perhaps indicate whether investors are willing to pay a higher price for a security, rather than seek buying opportunities at lower prices as the stock continues to decline. Therefore, the Exchange believes the proposal will provide greater benefits to subscribers compared to what is currently available on the Cboe website, and does not represent a significant departure from information that is currently available.

Furthermore, similar data points are derivable from the NYSE's Monthly Short Sales file, which provides a record of every short sale transaction for each security traded on the NYSE affiliated exchanges during the month.<sup>49</sup> Specifically, the NYSE Monthly Short Sale file includes a "short type" indicator for each transaction that indicates whether the short sale is short sale exempt or not short sale exempt and also includes the size of each transaction.<sup>50</sup> Therefore, subscribers to the NYSE Monthly Short Sales file can determine the sell short trade counts and sell short exempt trade counts by summing the number of each transaction on a given day during the prior month. Although the NYSE Monthly Short Sale file provides similar data points to that proposed here, such information is available on a monthly basis rather than a daily basis. Nonetheless, as proposed the sell short and sell short exempt trade counts would be available to subscribers on an end-of-day basis it is not designed to

provide information for which subscribers would make intraday trading decisions. Therefore, the Exchange does not believe the proposed data points would provide subscribers with an unfair advantage over other market participants. The Exchange believes the proposal strikes an appropriate balance in providing useful information to subscribers that is not a significant departure from existing information, but does not provide subscribers with sensitive information for which subscribers would make intraday trading decisions.

In sum, except for short sale and short sale exempt trade counts, each of the data points included in the proposed Short Volume Report are currently either available or derivable from a product of a competitor exchange or are publicly available. The Exchange seeks to gather information from each of these separate data points and compile such information into a useful format such as the proposed Short Volume Report. The Exchange believes that the proposed product will benefit market participants because consolidating the aforementioned data points in a single data product will allow market participants to more easily understand the changing risk environment on a daily basis and allow for more informed trading decisions. The information included in the proposed Short Volume Report will be provided on an end-of-day basis and will not provide information on an intraday basis. Nonetheless, subscribers will have access to not only the current end-of-day Short Volume Report, but historical end-of-day reports dating back to January 2, 2015. As such, the Exchange believes the proposal will provide subscribers with valuable information that may help in identifying historical price trends and short sale activity in a specific security. The proposal provides trade volume and trade count information but provides nothing to indicate who is responsible for selling pressure in a given security. Further, the proposal only provides information as it relates to transactions and provides no order information. Given this, combined with the general availability of the information comprising the Short Volume Report, the Exchange does not believe that the proposed Short Volume Report provides users or subscribers with sensitive trading information or an unfair competitive advantage.

Finally, as noted above the proposed Short Sale Report is a completely voluntary product, and participants are not required to subscribe to the Short Volume Report. Moreover, the Short Volume Report is available to all

<sup>44</sup> *Supra* note 27.

<sup>45</sup> *Supra* note 5.

<sup>46</sup> 17 CFR 242.201.

<sup>47</sup> 17 CFR 242.200(g)(2).

<sup>48</sup> *Id.* at 58.

<sup>49</sup> See the NYSE Monthly Short Sales Client Specification, Section 1, Introduction, at [https://www.nyse.com/publicdocs/nyse/data/Monthly\\_Short\\_Sales\\_Client\\_Spec\\_v1.3.pdf](https://www.nyse.com/publicdocs/nyse/data/Monthly_Short_Sales_Client_Spec_v1.3.pdf).

<sup>50</sup> *Id.*

potential users, regardless of size. Therefore, the Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the Exchange believes that the proposal will promote competition by permitting the Exchange to offer a data product that provides data similar to that offered by other competitor equities exchanges or data that is currently publicly available via the SIP, the Cboe website or DataShop, or other vendors. Any differences in the proposed product to similar products offered by competing exchanges are intended to better understand the changing risk environment on a daily basis. The Exchange is proposing to introduce the Short Volume Report in order to keep pace with changes in the industry and evolving customer needs and believes this proposed rule change would contribute to robust competition among national securities exchanges. Further, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Short Volume Report will be available equally to all Members and non-Members that choose to subscribe to such report. As stated, the Short Volume Report is optional and Members and non-Members may choose to subscribe, or not, based on their view of the additional benefits and added value provided by utilizing the Short Volume Report. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-078 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2021-078. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2021-078 and should be submitted on or before May 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>51</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022-09044 Filed 4-27-22; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>51</sup> 17 CFR 200.30-3(a)(12).

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #17418 and #17419; GEORGIA Disaster Number GA-00137]**

**Administrative Declaration of a Disaster for the State of Georgia**

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of GEORGIA dated 04/22/2022.

*Incident:* Severe Storms and Tornadoes.

*Incident Period:* 04/05/2022 through 04/06/2022.

**DATES:** Issued on 04/22/2022.

*Physical Loan Application Deadline Date:* 06/21/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/23/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Bryan.

*Contiguous Counties:*

Georgia: Bulloch, Chatham, Effingham, Evans, Liberty.

*The Interest Rates are:*

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	2.875
Homeowners without Credit Available Elsewhere .....	1.438
Businesses with Credit Available Elsewhere .....	5.880
Businesses without Credit Available Elsewhere .....	2.940
Non-Profit Organizations with Credit Available Elsewhere .....	1.875
Non-Profit Organizations without Credit Available Elsewhere .....	1.875
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	2.940
Non-Profit Organizations without Credit Available Elsewhere .....	1.875

The number assigned to this disaster for physical damage is 17418 C and for economic injury is 17419 0.

The State which received an EIDL Declaration # is Georgia.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**  
*Administrator.*

[FR Doc. 2022-09081 Filed 4-27-22; 8:45 am]

**BILLING CODE 8026-03-P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 17420; ALASKA Disaster Number AK-00051 Declaration of Economic Injury]**

### Administrative Declaration of an Economic Injury Disaster for the State of Alaska

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of ALASKA dated 04/22/2022.

*Incident:* Severe Winter Storms.

*Incident Period:* 01/01/2022 through 01/04/2022.

**DATES:** Issued on 04/22/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/23/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Areas:* Delta/Greely REAA, Matanuska-Susitna Borough.

*Contiguous Areas:*

Alaska: Alaska Gateway REAA, Chugach REAA, Copper River REAA, Denali Borough, Fairbanks North Star Borough, Iditarod Area REAA, Kenai Peninsula Borough, Municipality of Anchorage.

The Interest Rates are:

Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere .....	2.830
Non-Profit Organizations without Credit Available Elsewhere .....	1.875

The number assigned to this disaster for economic injury is 174200.

The State which received an EIDL Declaration #17420 is Alaska.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**  
*Administrator.*

[FR Doc. 2022-09083 Filed 4-27-22; 8:45 am]

**BILLING CODE 8026-03-P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #17423 and #17424; KANSAS Disaster Number KS-00150]**

### Administrative Declaration of a Disaster for the State of Kansas

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of KANSAS dated 04/22/2022.

*Incident:* Cottonwood Complex Fire.  
*Incident Period:* 03/05/2022 through 03/16/2022.

**DATES:** Issued on 04/22/2022.

*Physical Loan Application Deadline Date:* 06/21/2022.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/23/2023.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Reno.

*Contiguous Counties:*

Kansas: Harvey, Kingman, McPherson, Pratt, Rice, Sedgwick, Stafford.

*The Interest Rates are:*

	Percent
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*For Physical Damage:*

	Percent
Homeowners with Credit Available Elsewhere .....	2.875
Homeowners without Credit Available Elsewhere .....	1.438
Businesses with Credit Available Elsewhere .....	5.880
Businesses without Credit Available Elsewhere .....	2.940
Non-Profit Organizations with Credit Available Elsewhere .....	1.875
Non-Profit Organizations without Credit Available Elsewhere .....	1.875
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	2.940
Non-Profit Organizations without Credit Available Elsewhere .....	1.875

The number assigned to this disaster for physical damage is 17423 5 and for economic injury is 17424 0.

The State which received an EIDL Declaration # is Kansas.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**  
*Administrator.*

[FR Doc. 2022-09082 Filed 4-27-22; 8:45 am]

**BILLING CODE 8026-03-P**

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA-2020-0035]**

### Privacy Act of 1974; System of Records

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, we are issuing public notice of our intent to modify an existing system of records entitled, Anti-Fraud System (60-0388), last published on December 11, 2020. This notice publishes details of the modified system as set forth below under the caption, **SUPPLEMENTARY INFORMATION.**

**DATES:** The system of records notice (SORN) is applicable April 28, 2022, with the exception of the new routine uses, which take effect May 31, 2022. We invite public comment on the routine uses or other aspects of this SORN. In accordance with the Privacy Act of 1974, we are providing the public a 30-day period in which to submit comments. Therefore, please submit any comments by May 31, 2022.

**ADDRESSES:** The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive

Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G-401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, or through the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Please reference docket number SSA-2020-0035. All comments we receive will be available for public inspection at the above address and we will post them to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G-401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235-6401, telephone: (410) 966-5855, email: [tristin.dorsey@ssa.gov](mailto:tristin.dorsey@ssa.gov).

**SUPPLEMENTARY INFORMATION:** We are modifying the system manager and location to clarify the name of the office. We are modifying the Anti-Fraud System categories of individuals and records to include information about medical providers and medical examiners. We are also modifying the record source categories to include an existing system of records, Electronic Disability Claim File.

In addition, we are adding a new routine use to support one of SSA's strategic goals of enhancing fraud prevention and detection activities. This new routine use will permit disclosures to Federal, State, and local law enforcement agencies to investigate or prosecute criminal violations of the Social Security Act, or other applicable statutes to which criminal penalties attach. We are also updating the policies and practices for the retrieval of records, policies and practices for the retention and disposal of records, record access procedures, and notification procedures.

Lastly, we are modifying the notice throughout to correct miscellaneous stylistic formatting and typographical errors of the previously published notice, and to ensure the language reads consistently across multiple systems. We are republishing the entire notice for ease of reference.

In accordance with 5 U.S.C. 552a(r), we have provided a report to OMB and Congress on this modified system of records.

**Matthew Ramsey,**

*Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.*

**SYSTEM NAME AND NUMBER:**

Anti-Fraud System, 60-0388.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Social Security Administration, Office of Analytics, Review, and Oversight, Office of Program Integrity, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235.

**SYSTEM MANAGER(S):**

Social Security Administration, Office of Analytics, Review, and Oversight, Office of Program Integrity, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-5855.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 205(a) and 702(a)(5) of the Social Security Act, as amended, and the Fraud Reduction and Data Analytics Act of 2015 (Pub. L. 114-186).

**PURPOSE(S) OF THE SYSTEM:**

This system assists in detecting, preventing, mitigating, and tracking the likelihood of fraudulent activity in SSA's programs and operations. We will use the information in this system to identify patterns of fraud and to improve data-driven fraud activations and real-time analysis. We may use the results of these data analysis activities, including fraud leads and vulnerabilities, in our fraud investigations and other activities to support program and operational improvements.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This system maintains information about individuals who are relevant to suspicious or potentially fraudulent activities connected with Social Security programs and operations, including but not limited to, the subjects of an investigation; Social Security applicants and beneficiaries; Supplemental Security income applicants and recipients; representative payees; appointed representatives; complainants; key witnesses; and current or former employees, contractors, medical providers, suppliers, or agents.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This system consists of records related to our review of all suspicious or potentially fraudulent activities in Social Security programs and operations, and SSA and non-SSA breach information, which includes data generated internally or received from businesses with whom SSA has a relationship, or government entities or partners.

This system also consists of records that we obtain from existing SSA systems of records pertaining to individuals, such as:

- *Enumeration Information:* This information may include name, Social Security number (SSN), date of birth, parent name(s), address, and place of birth.

- *Earnings Information:* This information may include yearly earnings and quarters of coverage information.

- *Social Security Benefit Information:* This information may include disability status, benefit payment amount, data relating to the computation, appointed representative, and representative payee.

- *Supplemental Security Income payment information:* This information may include disability status, benefit payment amount, data relating to the computation, appointed representative, and representative payee.

- *Representative Payee Information:* This information may include names, SSNs, and addresses of representative payees and relationship with the beneficiary.

- *Persons Conducting Business with Us Through Electronic Services:* This information may include name, address, date of birth, SSN, knowledge-based authentication data, and blocked accounts.

- *Employee Information:* This information may include a personal identification number (PIN), employee name, job title, SSN about our employees, contractors, or agents.

- *Medical Provider/Examiner Information:* This information may include name, address, tax identification number or employee identification number, and an indicator when the medical examiner or medical provider is listed on the List of Excluded Individuals and Entities as maintained by the Department of Health and Human Services' Office of Inspector General.

**RECORD SOURCE CATEGORIES:**

We obtain information in this system from individuals, *i.e.*, members of the public and agency employees; local, State, and Federal agencies; private entities; and existing SSA systems of records, such as the Master Files of SSN Holders and SSN Applications (60-0058), Claims Folders System (60-0089), Master Beneficiary Record (60-0090), Supplemental Security Income Record and Special Veterans Benefits (60-0103), Personal Identification Number File (60-0214), Master Representative Payee File (60-0222), Electronic Disability Claim File (60-0320), and the Central Repository of Electronic Authentication Data Master File (60-0373). We may also obtain

information from other existing SSA system of records. For a full listing of our system of records that could provide information to the Anti-Fraud System, see [www.ssa.gov/privacy/sorn.html](http://www.ssa.gov/privacy/sorn.html).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as “return or return information” under 26 U.S.C. 6103 of the Internal Revenue Code (IRC), unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations.

1. To any agency, person, or entity in the course of an SSA investigation, to the extent necessary, to obtain or to verify information pertinent to an SSA fraud investigation.

2. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf.

3. To the Office of the President, in response to an inquiry received from that office made on behalf of, and at the request of, the subject of record or a third party acting on the subject's behalf.

4. To the Department of Justice (DOJ), a court or other tribunal, or another party before such court or tribunal, when:

(a) SSA, or any component thereof; or  
(b) any SSA employee in his or her official capacity; or

(c) any SSA employee in his or her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where we determine the litigation is likely to affect SSA or any of its components, is a party to the litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal, is relevant and necessary to the litigation, provided, however, that in each case, we determine that such disclosure is compatible with the purpose for which the records were collected.

5. To contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We will disclose information under this routine use only in situations in which we may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

6. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for us, as authorized by law, and they need access to PII in our records in order to perform their assigned agency functions.

7. To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace, and the operation of our facilities, or

(b) to assist investigations or prosecutions, with respect to activities that affect such safety and security, or activities that disrupt the operation of our facilities.

8. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

9. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (including its information systems, programs, and operations), the Federal Government, or national security; and

(c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

10. To another Federal agency or Federal entity, when we determine that information from this system of records is reasonably necessary to assist the recipient agency or entity in:

(a) Responding to suspected or confirmed breach; or

(b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

11. To the Equal Employment Opportunity Commission, when requested in connection with investigations into alleged or possible discriminatory practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines on Employee

Selection Procedures, or other functions vested in the Commission.

12. To the Office of Personnel Management, Merit Systems Protection Board, or the Office of Special Counsel, in connection with appeals, special studies of the civil service and other merit systems, review of rules and regulations, investigations of alleged or possible prohibited personnel practices, and other such functions promulgated in 5 U.S.C. Chapter 12, or as may be required by law.

13. To the Federal Labor Relations Authority, the Office of the Special Counsel, the Federal Mediation and Conciliation Service, the Federal Service Impasses Panel, or an arbitrator requesting information, in connection with the investigations of allegations of unfair practices, matters before an arbitrator, or the Federal Service Impasses Panel.

14. To Federal, State, and local law enforcement agencies, with jurisdiction to investigate or prosecute criminal violations of the Social Security Act, or other applicable statutes to which criminal penalties attach, when the agency determines that the information is relevant and necessary to the investigation or prosecution.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

We will maintain records in this system in paper and electronic form.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

We will retrieve medical provider records in this system by name, address, and title. We will retrieve remaining records in this system by name, SSN, and internal transaction identifiers (e.g., transaction identification for the internet Claim application, transaction identification for an electronic online Direct Deposit change, etc.). Information from these retrieved records that matches across other agency systems of records will also create a linkage to retrieve those records, as the system reflects key connections or overlaps based on similar information stored in different data sources at the agency.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

In accordance with NARA rules codified at 36 CFR 1225.16, we maintain records in accordance with agency-specific records schedule N1-47-05-1.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

We retain electronic and paper files containing personal identifiers in secure storage areas accessible only by our authorized employees and contractors

who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, PIN and password, and personal identification verification cards. We restrict access to specific correspondence within the system based on assigned roles and authorized users. We maintain electronic files with personal identifiers in secure storage areas. We use audit mechanisms to record sensitive transactions as an additional measure to protect information from unauthorized disclosure or modification. We keep paper records in cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties.

We annually provide our employees and contractors with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of PII (5 U.S.C. 552a(i)(1)). Furthermore, employees and contractors with access to databases maintaining PII must annually sign a sanction document that acknowledges their accountability for inappropriately accessing or disclosing such information.

#### RECORD ACCESS PROCEDURES:

This system of records is exempt from the Privacy Act's access, contesting, and notification provisions stated below. However, individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address, which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include (1) a notarized statement to us to verify their identity, or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand

that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40, 401.45, and 401.55.

#### CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

#### NOTIFICATION PROCEDURES:

Same as record access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40, 401.45, and 401.55.

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

This system of records is exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e) and were published on December 11, 2020, at 85 FR 79963.

#### HISTORY:

83 FR 19588, Anti-Fraud Enterprise Solution (AFES).

85 FR 80211, Anti-Fraud System.

[FR Doc. 2022-09091 Filed 4-27-22; 8:45 am]

BILLING CODE 4191-02-P

## DEPARTMENT OF STATE

[Public Notice: 11718]

### Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: “The Double: Identity and Difference in Art Since 1900” Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition “The Double: Identity and Difference in Art Since 1900” at the National Gallery of Art, Washington, District of Columbia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered

that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202-632-6471; email: [section2459@state.gov](mailto:section2459@state.gov)). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA-5), Suite 5H03, Washington, DC 20522-0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236-3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2022-09128 Filed 4-27-22; 8:45 am]

BILLING CODE 4710-05-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for Waiver of Aeronautical Land Use Assurance; Billings Logan International Airport, Billings, MT

**AGENCY:** Federal Aviation Administration, (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** Notice is being given that the FAA is considering a proposal from the City of Billings (Sponsor of the Billings Logan International Airport) to release Federal obligations on portions of the Billings Logan International Airport for disposal. The proposal consists of 15.2 acres acquired with an Airport Improvement Program grant shown as the east most section of Parcel 2A on the Airport's Exhibit “A”.

**DATES:** Comments must be received by May 31, 2022.

**ADDRESSES:** Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. William C. Garrison, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Helena Airports District Office, 2725 Skyway Drive, Suite 2, Helena, Montana 59602.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Joe Nye, Civil Engineer, Federal Aviation Administration, Northwest Mountain Region, Helena Airports District Office, 2725 Skyway Drive, Suite 2, Helena, MT 59602.

The request to release Federal obligations may be reviewed, by appointment, in person at the same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the request to release Federal obligations of 15.2 acres at the Billings Logan International Airport under the provisions of the Title 49, U.S.C. Section 47107(h).

The City of Billings, referred to herein as the Sponsor, has requested release from the Federal obligations assigned to 15.2 acres of land acquired under Airport Improvement Program Grant 3–30–0008–004–1986. The 15.2 acres is shown on the Airport's Exhibit "A" as the east most section of Parcel 2A and is isolated from the airfield by Highway 318.

The Sponsor has completed an appraisal for the 15.2 acres of Parcel 2A and found that current fair market value of the property is \$223,000. The Sponsor proposes to reimburse the federal interest in the 15.2 acres of Parcel 2A by reinvesting an amount of \$200,700 (90% of the current fair market value) towards the AIP eligible portion of the terminal expansion currently underway.

The Sponsor proposes to sell the property to Northwestern Energy for expansion of the Northwestern Energy Rimrock Substation. The proposed use of this property is compatible with other airport operations and the Sponsor will retain necessary easements to ensure the property continues to serve its intended purpose of approach protection and compatible land use.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in Helena, Montana on April 25, 2022.

**William C. Garrison,**  
Manager, Helena Airports District Office.  
[FR Doc. 2022–09094 Filed 4–27–22; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2021–0182]

**Qualification of Drivers; Exemption Applications; Narcolepsy**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of denial.

**SUMMARY:** FMCSA announces its decision to deny the application from one individual who requested an exemption from the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting operation of a commercial motor vehicle (CMV) in interstate commerce by persons with either a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a CMV.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Dockets Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:****I. Public Participation****A. Viewing Comments**

To view comments go to [www.regulations.gov](http://www.regulations.gov). Insert the docket number, FMCSA–2021–0182, in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

**B. Privacy Act**

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to

[www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

**II. Background**

On December 16, 2021, FMCSA published a **Federal Register** notice (86 FR 71537) announcing receipt of an application from one individual with a diagnosis of narcolepsy and requested comments from the public. The individual requested an exemption from 49 CFR 391.41(b)(8) which prohibits operation of a CMV in interstate commerce by persons with either a clinical diagnosis of epilepsy or any other condition that is likely to cause a loss of consciousness or any loss of ability to control a CMV. The public comment period closed on January 18, 2022, and one comment was received.

FMCSA has evaluated the eligibility of the applicant and concluded that granting an exemption would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(8). A summary of the applicant's medical history related to the narcolepsy exemption request was discussed in the December 16, 2021, **Federal Register** notice and will not be repeated here.

The Agency considered information from the 2009 Evidence Report, "Narcolepsy (with and without cataplexy) and Commercial Motor Vehicle Driver Safety," and the January 2010 Medical Review Board (MRB) recommendation that individuals with narcolepsy be ineligible for a commercial driver's license, even with treatment. A copy of the Evidence Report is included in the docket.

Narcolepsy is a chronic neurological disorder caused by autoimmune destruction of hypocretin-producing neurons inhibiting the brain's ability to regulate sleep-wake cycles normally. Persons with narcolepsy experience frequent excessive daytime sleepiness, comparable to how individuals without narcolepsy feel after 24 to 48 hours of sleep deprivation, as well as disturbed nocturnal sleep, which is often confused with insomnia. See National Institutes of Health Narcolepsy Fact Sheet at <https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Fact-Sheets/Narcolepsy-Fact-Sheet>.

The 2009 Evidence Report, "Narcolepsy (with and without cataplexy) and Commercial Motor Vehicle Driver Safety," addressed whether or not individuals with narcolepsy are at an increased risk for motor vehicle crashes; whether or not currently recommended treatments for

narcolepsy reduce the risk for motor vehicle crashes; and the impact of various medication therapies for narcolepsy on driver safety.

The evidence report reviewed studies from the available literature and evaluated outcomes on measures of Excessive Daytime Sleepiness (EDS), cataplexy, event rate, measures of cognitive and psychomotor function, and driving performance. The currently available direct and indirect evidence supports the contention that drivers with narcolepsy are at an increased risk for a motor vehicle crash when compared to otherwise similar individuals who do not have the disorder. The direct evidence from three crash studies conducted of non-CMV drivers showed that individuals with narcolepsy are at an increased risk for a crash compared to individuals who do not have narcolepsy. The indirect evidence from studies of driving tests and driving simulation examined factors associated with simulated driving outcomes such as driving performance, tracking error, fewer correct responses, and more instances of going out of bounds compared to healthy controls. While there are limitations in the quality of the studies that examined direct crash risk, both the direct and indirect studies showed a strong effect size and statistical significance. The American Academy of Sleep Medicine (AASM) and the European Federation of Neurological Societies recommend modafinil as the first treatment option and methylphenidate as the second treatment option. The AASM also recommends amphetamine, methamphetamine, or dextroamphetamine as alternative treatments. During literature searches, no studies that directly examined the impact of treatment with modafinil, armodafinil, sodium oxybate (used with narcolepsy with cataplexy), or antidepressants on crash risk or driving performance were identified. Therefore, conclusions regarding treatment with these medications on crash risk and driving performance could not be made.

Currently available evidence suggests that amphetamines and/or methylphenidate are effective in improving symptoms of EDS in individuals with narcolepsy (quality of studies range from “moderate to low”). However, these improvements do not result in levels of daytime sleepiness that can be considered to be normal in the vast majority of individuals. Therefore, conclusions regarding the impact of treatment with amphetamines, methylphenidate, or other related stimulant drugs on cognitive and psychomotor function among

individuals with narcolepsy could not be made.

In January 2010, the FMCSA’s MRB recommended that individuals with narcolepsy be ineligible for a commercial driver’s license, even with treatment.

#### *Discussion of Comments*

FMCSA received one comment in this proceeding from a private citizen who did not support granting an exemption in the interest of public safety and the applicant’s well-being. The commenter cites that the applicant’s medical provider states that the applicant’s current treatment has proven effective and that treatment continues without explicit determination by the medical provider that the current regimen has sufficiently remedied the applicant’s medical condition such that it would not interfere with the ability to drive a CMV in the future. FMCSA acknowledges the commenter’s concern. When evaluating a medical exemption application request, FMCSA considers the applicant’s relevant medical information, however the Agency does not make a decision to grant or deny a medical exemption solely on the basis of an applicant’s medical documentation.

#### **III. Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

The Agency’s decision regarding this exemption application is based on an individualized assessment of the applicant’s medical information, available medical and scientific data concerning narcolepsy, and any relevant public comments received.

#### **IV. Conclusion**

The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting this exemption would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the following applicant has been denied an exemption from the physical qualification standards in § 391.41(b)(8):

Sheila Bennett (TN)

The applicant has, prior to this notice, received a letter of final disposition regarding their exemption request. The decision letter fully outlined the basis

for the denial and constitute final action by the Agency. The name of the individual published in this notice summarizes the Agency’s recent denials as required under 49 U.S.C. 31315(b)(4).

Larry W. Minor,

*Associate Administrator for Policy.*

[FR Doc. 2022–09016 Filed 4–27–22; 8:45 am]

BILLING CODE 4910–EX–P

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–1998–4334; FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2001–10578; FMCSA–2002–11714; FMCSA–2002–12844; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2005–23238; FMCSA–2006–24015; FMCSA–2006–24783; FMCSA–2007–0017; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2008–0174; FMCSA–2008–0231; FMCSA–2008–0266; FMCSA–2008–0292; FMCSA–2009–0011; FMCSA–2009–0154; FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0102; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0275; FMCSA–2011–0299; FMCSA–2011–0324; FMCSA–2011–0325; FMCSA–2011–0365; FMCSA–2011–0366; FMCSA–2011–0378; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2011–26690; FMCSA–2012–0279; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2014–0010; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2015–0348; FMCSA–2015–0350; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2016–0033; FMCSA–2016–0209; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0019; FMCSA–2017–0024; FMCSA–2017–0026; FMCSA–2017–0028; FMCSA–2018–0006; FMCSA–2018–0007; FMCSA–2018–0008; FMCSA–2018–0010; FMCSA–2018–0012; FMCSA–2019–0008; FMCSA–2019–0009; FMCSA–2019–0010; FMCSA–2019–0013; FMCSA–2019–0015; FMCSA–2019–0017; FMCSA–2019–0018; FMCSA–2019–0019; FMCSA–2020–0005; FMCSA–2020–0006]

### **Qualification of Drivers; Exemption Applications; Vision**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to renew exemptions for 224 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcamedical@dot.gov](mailto:fmcamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

#### **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### *A. Viewing Comments*

To view comments go to [www.regulations.gov](http://www.regulations.gov), insert the docket number, FMCSA-1998-4334, FMCSA-1999-6156, FMCSA-1999-6480, FMCSA-2001-10578, FMCSA-2002-11714, FMCSA-2002-12844, FMCSA-2003-15892, FMCSA-2003-16564, FMCSA-2004-17984, FMCSA-2004-18885, FMCSA-2005-21254, FMCSA-2005-21711, FMCSA-2005-22194, FMCSA-2005-22727, FMCSA-2005-23238, FMCSA-2006-24015, FMCSA-2006-24783, FMCSA-2007-0017, FMCSA-2007-27897, FMCSA-2008-0021, FMCSA-2008-0174, FMCSA-2008-0231, FMCSA-2008-0266, FMCSA-2008-0292, FMCSA-2009-0011, FMCSA-2009-0154, FMCSA-2009-0206, FMCSA-2009-0291, FMCSA-2009-0303, FMCSA-2010-0372, FMCSA-2010-0385, FMCSA-2011-0102, FMCSA-2011-0124, FMCSA-2011-0140, FMCSA-2011-0275, FMCSA-2011-0299, FMCSA-2011-0324, FMCSA-2011-0325, FMCSA-2011-0365, FMCSA-2011-0366, FMCSA-2011-0378, FMCSA-2011-0379, FMCSA-2011-0380, FMCSA-2011-26690, FMCSA-2012-0279, FMCSA-2012-0338, FMCSA-2013-0022, FMCSA-2013-0026, FMCSA-2013-0027, FMCSA-2013-0028, FMCSA-2013-0165, FMCSA-2013-0166, FMCSA-2013-0167,

FMCSA-2013-0168, FMCSA-2013-0169, FMCSA-2013-0170, FMCSA-2013-0174, FMCSA-2014-0002, FMCSA-2014-0003, FMCSA-2014-0004, FMCSA-2014-0010, FMCSA-2014-0296, FMCSA-2014-0298, FMCSA-2015-0048, FMCSA-2015-0049, FMCSA-2015-0052, FMCSA-2015-0053, FMCSA-2015-0055, FMCSA-2015-0056, FMCSA-2015-0070, FMCSA-2015-0071, FMCSA-2015-0072, FMCSA-2015-0344, FMCSA-2015-0345, FMCSA-2015-0347, FMCSA-2015-0348, FMCSA-2015-0350, FMCSA-2015-0351, FMCSA-2016-0024, FMCSA-2016-0033, FMCSA-2016-0209, FMCSA-2016-0377, FMCSA-2017-0017, FMCSA-2017-0019, FMCSA-2017-0024, FMCSA-2017-0026, FMCSA-2017-0028, FMCSA-2018-0006, FMCSA-2018-0007, FMCSA-2018-0008, FMCSA-2018-0010, FMCSA-2018-0012, FMCSA-2019-0008, FMCSA-2019-0009, FMCSA-2019-0010, FMCSA-2019-0013, FMCSA-2019-0015, FMCSA-2019-0017, FMCSA-2019-0018, FMCSA-2019-0019, FMCSA-2020-0005, or FMCSA-2020-0006 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

#### *B. Privacy Act*

In accordance with 49 U.S.C. 31315(b)(6), DOT solicits comments from the public on the exemption request. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

### **II. Background**

On March 1, 2022, FMCSA published a notice announcing its decision to renew exemptions for 224 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (87 FR 11496). The public comment period ended on March 31, 2022, and no

comments were received to the docket in this proceeding.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

### **III. Discussion of Comments**

FMCSA received no comments to the docket in this proceeding.

### **IV. Conclusion**

Based on its evaluation of the 224 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

As of March 2, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 127 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66227; 64 FR 16520; 64 FR 54948; 65 FR 159; 66 FR 53826; 66 FR 66966; 66 FR 66969; 68 FR 52811; 68 FR 61860; 68 FR 69432; 68 FR 69434; 69 FR 33997; 69 FR 53493; 69 FR 61292; 69 FR 62741; 70 FR 30999; 70 FR 46567; 70 FR 48797; 70 FR 48798; 70 FR 48799; 70 FR 48800; 70 FR 53412; 70 FR 57353; 70 FR 61165; 70 FR 72689; 70 FR 74102; 71 FR 644; 71 FR 14566; 71 FR 30227; 71 FR 32183; 71 FR 41310; 71 FR 55820; 71 FR 62147; 71 FR 62147; 72 FR 39879; 72 FR 40359; 72 FR 52419; 72 FR 58359; 72 FR 62897; 72 FR 67340; 72 FR 71993; 72 FR 71995; 72 FR 71998; 73 FR 1395; 73 FR 5259; 73 FR 27014; 73 FR 38497; 73 FR 46973; 73 FR 48273; 73 FR 51689; 73 FR 54888; 73 FR 60398; 73 FR 61922; 73 FR 61925; 73 FR 63047; 73 FR 65009; 73 FR 74565; 74 FR 19270; 74 FR 34074; 74 FR 37295; 74 FR 43217; 74 FR 48343; 74 FR 53581; 74 FR 57551; 74 FR 60021; 74 FR 60022; 74 FR 64124; 74 FR 65842; 74 FR 65845; 74 FR 65847; 75 FR 1451; 75 FR 4623; 75 FR 9482; 75 FR 44051; 75 FR 50799; 75 FR 64396;

75 FR 77942; 75 FR 77949; 76 FR 4413;  
 76 FR 5425; 76 FR 7894; 76 FR 17483;  
 76 FR 20078; 76 FR 25762; 76 FR 29022;  
 76 FR 29026; 76 FR 34136; 76 FR 37169;  
 76 FR 44082; 76 FR 44653; 76 FR 50318;  
 76 FR 55463; 76 FR 64169; 76 FR 64171;  
 76 FR 66123; 76 FR 70210; 76 FR 70212;  
 76 FR 73769; 76 FR 75942; 76 FR 75943;  
 76 FR 78728; 76 FR 78729; 76 FR 79760;  
 77 FR 539; 77 FR 543; 77 FR 545; 77 FR  
 3547; 77 FR 10604; 77 FR 10608; 77 FR  
 46153; 77 FR 60008; 77 FR 64582; 77 FR  
 68202; 77 FR 71671; 77 FR 74731; 78 FR  
 10250; 78 FR 12811; 78 FR 12815; 78 FR  
 16762; 78 FR 22598; 78 FR 22602; 78 FR  
 24300; 78 FR 24798; 78 FR 27281; 78 FR  
 30954; 78 FR 37274; 78 FR 41188; 78 FR  
 46407; 78 FR 47818; 78 FR 51268; 78 FR  
 62935; 78 FR 63302; 78 FR 63307; 78 FR  
 64271; 78 FR 64274; 78 FR 65032; 78 FR  
 66099; 78 FR 67452; 78 FR 67454; 78 FR  
 67462; 78 FR 68137; 78 FR 76395; 78 FR  
 76704; 78 FR 76705; 78 FR 76707; 78 FR  
 77778; 78 FR 77780; 78 FR 77782; 78 FR  
 78475; 78 FR 78477; 79 FR 2247; 79 FR  
 2748; 79 FR 3919; 79 FR 4531; 79 FR  
 4803; 79 FR 6993; 79 FR 10619; 79 FR  
 18392; 79 FR 29498; 79 FR 46153; 79 FR  
 51643; 79 FR 53708; 79 FR 56104; 79 FR  
 58856; 79 FR 64001; 79 FR 65759; 79 FR  
 65760; 79 FR 69985; 79 FR 72754; 80 FR  
 7679; 80 FR 8927; 80 FR 14220; 80 FR  
 16500; 80 FR 18696; 80 FR 26139; 80 FR  
 26320; 80 FR 31635; 80 FR 31636; 80 FR  
 33007; 80 FR 35699; 80 FR 36395; 80 FR  
 36398; 80 FR 37718; 80 FR 40122; 80 FR  
 41547; 80 FR 44188; 80 FR 48404; 80 FR  
 48409; 80 FR 48413; 80 FR 50917; 80 FR  
 59225; 80 FR 59230; 80 FR 62161; 80 FR  
 62163; 80 FR 63869; 80 FR 67472; 80 FR  
 67476; 80 FR 67481; 80 FR 70060; 80 FR  
 76345; 80 FR 79414; 80 FR 80443; 81 FR  
 1284; 81 FR 11642; 81 FR 15401; 81 FR  
 15404; 81 FR 16265; 81 FR 20433; 81 FR  
 44680; 81 FR 59266; 81 FR 60117; 81 FR  
 70251; 81 FR 74494; 81 FR 90050; 81 FR  
 91239; 81 FR 96165; 81 FR 96178; 81 FR  
 96180; 82 FR 13045; 82 FR 15277; 82 FR  
 18949; 82 FR 18956; 82 FR 20962; 82 FR  
 22379; 82 FR 23712; 82 FR 32919; 82 FR  
 33542; 82 FR 35043; 82 FR 37499; 82 FR  
 47295; 82 FR 47312; 82 FR 47313; 82 FR  
 58262; 83 FR 2306; 83 FR 2311; 83 FR  
 3861; 83 FR 4537; 83 FR 6919; 83 FR  
 6922; 83 FR 6925; 83 FR 15232; 83 FR  
 18648; 83 FR 53724; 84 FR 2314; 84 FR  
 2326; 84 FR 12665; 84 FR 16320; 84 FR  
 16333; 84 FR 21397; 84 FR 21401; 84 FR  
 23629; 84 FR 27688; 84 FR 28619; 84 FR  
 46088; 84 FR 47038; 84 FR 47047; 84 FR  
 47056; 84 FR 47057; 84 FR 52160; 84 FR  
 52166; 84 FR 58437; 84 FR 58441; 84 FR  
 58448; 84 FR 66442; 84 FR 66444; 84 FR  
 68288; 84 FR 69814; 84 FR 72114; 84 FR  
 72120; 85 FR 4764; 85 FR 4769; 85 FR  
 6993; 85 FR 8334; 85 FR 9932);  
 Juan D. Adame (TX)  
 Gary R. Andersen (NE)

Garry A. Baker (OH)  
 Joel D. Barchard (MA)  
 Stephen W. Barrows (OR)  
 Theodore N. Belcher (VA)  
 Steven A. Blinco (MT)  
 Rickie L. Boone (NC)  
 Jerry A. Bordelon (LA)  
 David B. Bowman (PA)  
 Walter A. Breeze (OH)  
 Eugene R. Briggs (MI)  
 John M. Brown (KY)  
 Raymond K. Brubaker (WA)  
 Larry W. Buchanan (NM)  
 Cris D. Bush (TN)  
 James E. Byrnes (MO)  
 Joseph A. Cardazone (NJ)  
 Henry L. Chastain (GA)  
 Lesco R. Chubb (GA)  
 Joseph A. Clark (WI)  
 Stewart K. Clayton (TX)  
 Donald O. Clopton (AL)  
 Joseph Coelho (RI)  
 James J. Coffield (NM)  
 Marion J. Coleman, Jr. (KY)  
 Adan Cortes-Juarez (WA)  
 Zackary C. Crichton (WY)  
 Kenneth D. Daniels (PA)  
 Deurice K. Dean (MD)  
 John A. DeVos (VT)  
 Bradley R. Dishman (KY)  
 James J. Doan (PA)  
 Bruce J. Dowd (CT)  
 Micheal H. Eheler (WI)  
 David E. Evans (NC)  
 Mark A. Farnsley (IN)  
 James P. Fitzgerald (MA)  
 Clarence N. Florey, Jr. (PA)  
 Ronald W. Garner (WA)  
 Darryl W. Hardy (AL)  
 Dewayne E. Harms (IL)  
 John M. Harvey (TX)  
 Steven M. Hoover (IL)  
 Jesus J. Huerta (NV)  
 Amos W. Hulsey (AL)  
 Darryl H. Johnson (WV)  
 Freddie H. Johnson (ID)  
 David B. Jones (FL)  
 Rufus L. Jones (NJ)  
 Alfred Keehn (AZ)  
 Karen L. Kelly (DE)  
 Theodore J. Kenyon (VT)  
 Dobbins L. Kirkbride (OH)  
 Robert W. Kleve (IA)  
 Thomas Korycki (NJ)  
 Larry G. Kreke (IL)  
 Rocky J. Lachney (LA)  
 Adam S. Larson (CO)  
 Chase L. Larson (WA)  
 Richard L. Loeffelholz (WI)  
 Leonardo Lopez (NE)  
 Anthony Luciano (CT)  
 Robert J. MacInnis (MA)  
 Rodolfo Martinez (TX)  
 Christopher V. May (GA)  
 Robert E. Mayers (MN)  
 Dean A. Maystead (MI)  
 Colin D. McGregor (WI)  
 Kevin D. Mendoza (WA)  
 Gregory G. Miller (OH)

James G. Mitchell (AL)  
 Rashawn L. Morris (VA)  
 Kenneth R. Murphy (WA)  
 Brian T. Nelson (MN)  
 James P. O'Berry (GA)  
 Steven D. O'Donnell (NJ)  
 Charles D. Oestreich (MN)  
 Carlos A. Osollo (NM)  
 William K. Otwell (LA)  
 Anthony D. Ovitt (VT)  
 Gerardo A. Padron (FL)  
 Daniel F. Perez (CA)  
 Joe M. Perez (TX)  
 Nathan Pettis (FL)  
 Johnny L. Powell (MD)  
 Kerry R. Powers (IN)  
 Kevin L. Quastad (IA)  
 Jason R. Raml (SD)  
 Branden J. Ramos (CA)  
 David J. Reed (TX)  
 Robert D. Reeder (MI)  
 Martin S. Reese (CA)  
 Christopher M. Rivera (NM)  
 Charles J. Rowsey (NC)  
 Carl W. Russell (OK)  
 Manuel H. Sanchez (TX)  
 Robert E. Sanders (PA)  
 Phillip D. Satterfield (GA)  
 Justin E. Schwada (MO)  
 Jarrod R. Seirer (KS)  
 Jeffery T. Skaggs (IA)  
 James J. Slemmer (PA)  
 John R. Snyder (WA)  
 Efen J. Soliz (NM)  
 Juan E. Sotero (FL)  
 Mark R. Stevens (IA)  
 Dale L. Stewart (MI)  
 Kenneth C. Stump (FL)  
 Sukru Tamirci (NY)  
 Robert Thomas (PA)  
 James L. Tinsley, Jr. (VA)  
 George E. Todd (WV)  
 Rene R. Trachsel (OR)  
 Stanley W. Tyler, Jr. (NC)  
 Victor H. Vera (TX)  
 Daniel R. Viscaya (NC)  
 John H. Voigts (AZ)  
 Gary D. Vollertsen (CO)  
 David L. Von Hagen (IA)  
 James H. Wallace, Sr. (FL)  
 Stephen H. Ward (MO)  
 James A. Welch (NH)  
 Richard A. Westfall (OH)  
 Lorenzo A. Williams (DE)  
 Reginald J. Wuethrich (IL)  
 Chadwick L. Wyatt (NC)

The drivers were included in docket numbers FMCSA-1998-4334; FMCSA-1999-6156; FMCSA-2001-10578; FMCSA-2003-15892; FMCSA-2004-17984; FMCSA-2004-18885; FMCSA-2005-21254; FMCSA-2005-21711; FMCSA-2005-22194; FMCSA-2006-24015; FMCSA-2006-24783; FMCSA-2007-0017; FMCSA-2007-27897; FMCSA-2008-0174; FMCSA-2008-0231; FMCSA-2008-0266; FMCSA-2008-0292; FMCSA-2009-0154;

FMCSA–2009–0206; FMCSA–2009–0291; FMCSA–2009–0303; FMCSA–2010–0372; FMCSA–2010–0385; FMCSA–2011–0102; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0299; FMCSA–2011–0325; FMCSA–2011–26690; FMCSA–2012–0279; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0165; FMCSA–2013–0166; FMCSA–2013–0167; FMCSA–2013–0168; FMCSA–2013–0169; FMCSA–2013–0170; FMCSA–2014–0004; FMCSA–2014–0010; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2015–0056; FMCSA–2015–0070; FMCSA–2015–0071; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2016–0033; FMCSA–2016–0209; FMCSA–2016–0377; FMCSA–2017–0017; FMCSA–2017–0019; FMCSA–2017–0024; FMCSA–2017–0026; FMCSA–2019–0008; FMCSA–2019–0009; FMCSA–2019–0010; FMCSA–2019–0013; FMCSA–2019–0015; FMCSA–2019–0017; FMCSA–2019–0018; FMCSA–2019–0019. Their exemptions were applicable as of March 2, 2022 and will expire on March 2, 2024.

As of March 7, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following individual has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (77 FR 3552; 77 FR 13691; 79 FR 12565; 81 FR 20433; 83 FR 6919; 85 FR 6993):

Samuel V. Holder (IL)

The driver was included in docket number FMCSA–2011–0365. The exemption was applicable as of March 7, 2022 and will expire on March 7, 2024.

As of March 10, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (81 FR 6573; 81 FR 28136; 83 FR 6919; 85 FR 6993; 85 FR 6997; 85 FR 19220):

Thomas M. Bowman (OH)

Robert W. Fawcett (PA)

Lester Johnson (GA)

Dennis C. Rokes (IA)

Brian Wayne Roughton (MO)

Juan Santay-Ajanel (DE)

The drivers were included in docket numbers FMCSA–2015–0348; and FMCSA–2020–0005. Their exemptions

were applicable as of March 10, 2022 and will expire on March 10, 2024.

As of March 13, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (79 FR 1908; 79 FR 14333; 81 FR 20433; 83 FR 6919; 85 FR 6993):

Justin W. Demarchi (OH); David G.

Henry (TX); and Jason C. Sadler (KY)

The drivers were included in docket number FMCSA–2013–0174. Their exemptions were applicable as of March 13, 2022 and will expire on March 13, 2024.

As of March 17, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (83 FR 6681; 83 FR 6694; 83 FR 24151; 83 FR 24571; 85 FR 6993):

Kenneth W. Blake (KS)

James M. Ferry (OH)

Jacob A. Hehr (IL)

Marvin Ronald Knecht (ND)

Martin Munoz (TX)

Robert Lee Redding (NC)

The drivers were included in docket numbers FMCSA–2017–0028; and FMCSA–2018–0006. Their exemptions were applicable as of March 17, 2022 and will expire on March 17, 2024.

As of March 22, 2022, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 81 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 68195; 65 FR 20251; 67 FR 15662; 67 FR 17102; 67 FR 37907; 67 FR 68719; 68 FR 2629; 68 FR 74699; 69 FR 10503; 69 FR 17267; 69 FR 26206; 69 FR 71100; 70 FR 71884; 71 FR 4632; 71 FR 5105; 71 FR 6829; 71 FR 16410; 71 FR 19600; 71 FR 26602; 72 FR 1053; 72 FR 39879; 72 FR 52422; 73 FR 5259; 73 FR 11989; 73 FR 15254; 73 FR 15567; 73 FR 27014; 73 FR 27015; 73 FR 27017; 73 FR 76440; 74 FR 49069; 74 FR 65842; 75 FR 1451; 75 FR 9480; 75 FR 9482; 75 FR 13653; 75 FR 19674; 75 FR 20881; 75 FR 22176; 75 FR 27621; 75 FR 27622; 76 FR 64164; 76 FR 75942; 77 FR 545; 77 FR 3547; 77 FR 5874; 77 FR 7657; 77 FR 10604; 77 FR 15184; 77 FR 17107; 77 FR 17108; 77 FR 17115; 77 FR 17117; 77 FR 19749; 77 FR 22059; 77 FR 22838; 77 FR 23797; 77 FR 26816; 77 FR 27849; 77 FR 27850; 78 FR 64271; 78 FR 64274; 78 FR 67452; 78 FR 77778; 78 FR 78475; 79 FR 1908; 79 FR 2247; 79 FR 2748; 79 FR 10606; 79 FR 10607;

79 FR 10610; 79 FR 10619; 79 FR 13085; 79 FR 14333; 79 FR 14571; 79 FR 15794; 79 FR 17641; 79 FR 17642; 79 FR 17643; 79 FR 18390; 79 FR 18391; 79 FR 18392; 79 FR 21996; 79 FR 22003; 79 FR 23797; 79 FR 28588; 79 FR 29498; 80 FR 67476; 80 FR 67481; 80 FR 70060; 80 FR 76345; 80 FR 79414; 80 FR 80443; 81 FR 1474; 81 FR 14190; 81 FR 15404; 81 FR 16265; 81 FR 17237; 81 FR 20433; 81 FR 20435; 81 FR 21655; 81 FR 28138; 81 FR 39100; 81 FR 44680; 81 FR 48493; 81 FR 52516; 81 FR 60117; 81 FR 66718; 81 FR 91239; 83 FR 2311; 83 FR 6681; 83 FR 6919; 83 FR 6922; 83 FR 6925; 83 FR 15195; 83 FR 15214; 83 FR 15216; 83 FR 18644; 83 FR 18648; 83 FR 24146; 83 FR 24151; 83 FR 28320; 83 FR 28323; 83 FR 28328; 83 FR 28342; 83 FR 45749; 85 FR 6993; 85 FR 12959; 85 FR 19224; 85 FR 21919; 85 FR 33784):

Thomas R. Abbott (TN)

Zachary A. Abbotts (CT)

Ahmed Abukhatwa (MI)

Ronald C. Ashley (GA)

James E. Baker (OH)

Terry M. Baldwin (PA)

Aaron D. Barnett (IA)

Dmitriy D. Bayda (WA)

Thomas Benavidez, Jr. (ID)

Donald J. Bierwirth, Jr. (CT)

Lee R. Boykin (TX)

Robert L. Brauns (IA)

Joe W. Brewer (SC)

James A. Champion (WA)

Loren D. Chapman (MN)

Dana L. Colberg (OR)

Walter F. Crean, III (CT)

William T. Cummins (KY)

James T. Curtis (NM)

Jim L. Davis (NM)

Clifford W. Doran, Jr. (NC)

Jason P. Dostal (IN)

John C. Duncan (FL)

James W. Ellis, 4th (NJ)

Spencer L. Goard (KY)

Danny R. Gray (OK)

Glenn C. Grimm (NJ)

Hugo N. Gutierrez (IN)

Keith J. Haaf (VA)

Ethan A. Hale (KY)

Thomas R. Hedden (IL)

Trevor M. Hilton (IL)

Neil W. Jennings (MO)

Robert E. Johnston, Jr. (WA)

William J. Kanaris (NY)

James D. Kessler (SD)

Matthew J. Konecki (MT)

Richard R. Krafczynski (PA)

Jeffrey T. Landry (NC)

Robert G. Lanning (VA)

Gary D. Larson (NE)

Paul K. Leger (NH)

Earl E. Martin (VA)

Herman Martinez (NM)

Martin L. Mayes (GA)

Trent C. McCain (KS)

David M. McCarty (OR)

Dale A. McCoy (ME)  
 Cole W. McLaughlin (SD)  
 Rodney J. McMorran (IA)  
 Daniel A. McNabb, Jr. (KS)  
 Daniel I. Miller (PA)  
 Darin P. Milton (TN)  
 Robert Mollicone (FL)  
 Russell L. Moyers, Sr. (WV)  
 Robert L. Murray (IL)  
 Millard F. Neace II (WV)  
 Michael Nichols (GA)  
 Harold D. Pressley (TX)  
 Erik M. Rice (TX)  
 Douglas L. Riddell (CA)  
 John M. Riley (AL)  
 Gilbert M. Rosas (AZ)  
 Donald P. Ruckinger (PA)  
 Michael B. Sauseda (IL)  
 Tatum R. Schmidt (IA)  
 Harry J. Scholl (PA)  
 Kim A. Shaffer (PA)  
 Jeffery A. Sheets (AR)  
 Colby T. Smith (UT)  
 Aaron S. Taylor (WI)  
 Michael A. Terry (IN)  
 Glenn R. Theis (MN)  
 Hany A. Wagieh (NJ)  
 Eddie Walker (NC)  
 Norman J. Watson (NC)  
 Charles T. Whitehead (NC)  
 Ronald D. Wilson (KY)  
 Elmer F. Winters (NC)  
 Trent Wipf (SD)  
 Kevin Young (NJ)

The drivers were included in docket numbers FMCSA–1999–6480; FMCSA–2002–11714; FMCSA–2002–12844; FMCSA–2003–16564; FMCSA–2005–22727; FMCSA–2005–23238; FMCSA–2007–27897; FMCSA–2008–0021; FMCSA–2009–0011; FMCSA–2009–0291; FMCSA–2011–0275; FMCSA–2011–0324; FMCSA–2011–0366; FMCSA–2011–0378; FMCSA–2011–0379; FMCSA–2011–0380; FMCSA–2013–0167; FMCSA–2013–0169; FMCSA–2013–0174; FMCSA–2014–0002; FMCSA–2014–0003; FMCSA–2014–0004; FMCSA–2015–0070; FMCSA–2015–0072; FMCSA–2015–0344; FMCSA–2015–0345; FMCSA–2015–0347; FMCSA–2015–0350; FMCSA–2015–0351; FMCSA–2016–0024; FMCSA–2017–0026; FMCSA–2017–0028; FMCSA–2018–0007; FMCSA–2018–0008; FMCSA–2018–0010; FMCSA–2018–0012; and FMCSA–2020–0006. Their exemptions were applicable as of March 22, 2022 and will expire on March 22, 2024.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has

resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2022–09018 Filed 4–27–22; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2022–0002–N–6]**

#### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

**DATES:** Interested persons are invited to submit comments on or before June 27, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2022–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Hodan Wells, Information Collection Clearance Officer, at email: *hodan.wells@dot.gov* or telephone: (202) 493–0440.

**SUPPLEMENTARY INFORMATION:** The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days’ notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C.

3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a “user-friendly” format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

**Title:** System for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings.

**OMB Control Number:** 2130–0591.

**Abstract:** The collection of information set forth under 49 CFR part 234 is used by FRA to ensure that the Congressional mandate<sup>1</sup> to require railroad carriers to establish and maintain a toll-free telephone service to report unsafe conditions at highway-rail and pathway grade crossings is carried out. This information is used by railroads to investigate and respond to unsafe conditions and thereby reduce the risk of accidents/incidents and corresponding casualties and property damage at such crossings. Additionally, law enforcement authorities use the information to direct vehicular traffic or carry out other activities to maintain safety at the highway-rail grade crossing or pathway grade crossing.

<sup>1</sup> Section 205 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Division A (October 16, 2008).

*Type of Request:* Extension without change (with changes in estimates) of a currently approved collection.

*Affected Public:* Businesses.  
*Form(s):* N/A.  
*Respondent Universe:* 621 railroads.

*Frequency of Submission:* On occasion.  
*Reporting Burden:*

Section <sup>2</sup>	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent wage <sup>3</sup> (D) = C *
234.303(a)–(c) and (e)—Emergency notification systems for telephonic reporting of unsafe conditions at highway-rail and pathway grade crossings—Receipt by dispatching railroad (RR) of report of unsafe condition at highway-rail grade crossing.	621 railroads .....	64,000 call reports .....	1 minute .....	1,066.67	\$28,800.09
—(d) Receipt by dispatching RR of report of unsafe condition at pathway grade crossing.	621 railroads .....	1,860 call reports .....	1 minute .....	31.00	2,400.64
234.305(a)(2)—Remedial actions in response to reports of unsafe conditions at highway-rail and pathway grade crossings—General rule on response to credible report of warning system malfunction at a highway-rail grade crossing—Prompt contact by the dispatching RR not having maintenance responsibility for all trains that are authorized to operate through the highway-rail grade crossing of the reported malfunction prior to each train's arrival at the crossing.	621 railroads .....	465 contacts .....	1 minute .....	7.75	557.15
—(a)(2) General rule on response to credible report of warning system malfunction at a highway-rail grade crossing—Dispatching RR to promptly contact the maintaining RR and inform it of the reported malfunction.	621 railroads .....	465 contacts .....	1 minute .....	7.75	600.16
—(b)(1) General rule on response to public report of warning system malfunction at a highway-rail grade crossing—Prompt contact by the dispatching RR to all trains that are authorized to operate through the highway-rail grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing.	621 railroads .....	925 contacts .....	1 minute .....	15.42	1,108.54
—(b)(1) General rule on response to public report of warning system malfunction at a highway-rail grade crossing—Prompt contact by the dispatching RR to law enforcement agency having jurisdiction over the highway-rail grade crossing to provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the highway-rail grade crossing.	621 railroads .....	925 contacts .....	1 minute .....	15.42	1,194.12
—(b)(2) General rule on response to public report of warning system malfunction at a highway-rail grade crossing—Dispatching RR that does not have maintenance responsibility for the warning system at the highway-rail grade crossing shall promptly contact all trains that are authorized to operate through the highway-rail grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing.	621 railroads .....	925 contacts .....	1 minute .....	15.42	1,194.12
—(b)(2) General rule on response to report of warning system failure at a pathway grade crossing—Dispatching RR to promptly contact the law enforcement agency having jurisdiction over the highway-rail grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the highway-rail grade crossing.	621 railroads .....	925 contacts .....	1 minute .....	15.42	1,194.12
—(b)(2) General rule on response to public report of warning system malfunction at a highway-rail grade crossing—Dispatching RR to promptly contact the maintaining RR and inform it of the reported malfunction and maintaining RR to promptly investigate the report, determine the nature of the malfunction, and take the appropriate action required by § 234.207.	621 railroads .....	925 contacts .....	1 minute .....	15.42	1,194.12

Section <sup>2</sup>	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent wage <sup>3</sup> (D) = C *
—(c)(1) General rule on response to report of warning system failure at a pathway grade crossing—Dispatching RR to promptly contact all trains that are authorized to operate through the pathway grade crossing in an effort to notify the train crews of the reported malfunction prior to each train's arrival at the crossing.	621 railroads .....	12 contacts .....	1 minute .....	.20	15.49
—(c)(1) General rule on response to report of warning system failure at a pathway grade crossing—Dispatching RR shall then promptly contact the law enforcement agency having jurisdiction over the pathway grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing.	621 railroads .....	12 contacts .....	1 minute .....	.20	15.49
—(c)(2) General rule on response to report of warning system failure at a pathway grade crossing—Dispatching RR that does not have maintenance responsibility for the warning system at the pathway grade crossing shall promptly contact all trains that are authorized to operate through the pathway grade crossing in an effort to notify the train crews of the reported failure prior to each train's arrival at the crossing.	465 railroads .....	2 contacts .....	1 minute .....	.03	2.32
—(c)(2) General rule on response to report of warning system failure at a pathway grade crossing—Dispatching RR to promptly contact the law enforcement agency having jurisdiction over the pathway grade crossing and provide the necessary information for the law enforcement agency to direct traffic or carry out other activities to maintain safety at the pathway grade crossing.	465 railroads .....	2 contacts .....	1 minute .....	.03	2.32
—(c)(2) General rule on response to report of warning system failure at a pathway grade crossing—Dispatching RR to promptly contact the maintaining railroad and inform it of the reported failure.	465 railroads .....	2 contacts .....	1 minute .....	.03	2.32
—(d)(1) General rule on response to report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing—Dispatching RR having maintenance authority to notify all trains operating through highway-rail or pathway grade crossing in an effort to notify the train crews of the report of disabled vehicle/other obstruction prior to each train's arrival at the crossing.	621 railroads .....	7,440 contacts .....	1 minute .....	124.00	9,602.56
—(d)(1) General rule on response to report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing—Dispatching RR having maintenance responsibility to contact law enforcement authority and provide information about report of disabled vehicle/other obstruction.	621 railroads .....	7,440 contacts .....	1 minute .....	124.00	9,602.56
—(d)(2) General rule on response to report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing—Dispatching RR not having maintenance responsibility to contact all trains operating through highway rail or pathway grade crossing in an effort to notify the train crews of the report of disabled vehicle/other obstruction prior to each train's arrival at the crossing.	621 railroads .....	2,560 contacts .....	1 minute .....	42.67	3,067.55
—(d)(2) General rule on response to report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing—Dispatching RR not having maintenance responsibility to contact law enforcement authority and provide information about report of disabled vehicle/other obstruction.	621 railroads .....	2,560 contacts .....	1 minute .....	42.67	3,304.36

Section <sup>2</sup>	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent wage <sup>3</sup> (D) = C *
—(d)(2) General rule on response to report of a disabled vehicle or other obstruction blocking a railroad track at a highway-rail or pathway grade crossing—Dispatching RR contact of maintaining RR regarding report of disabled vehicle/other obstruction and maintaining RR prompt investigation of the report, determination of the nature of the obstruction, and taking necessary action to have reported obstruction removed.	621 railroads .....	2,560 contacts .....	1 minute .....	42.67	3,304.36
—(e) Special rule on contacting a train that is not required to have communication equipment.	621 railroads .....	2 contacts .....	1 minute .....	.03	2.32
—(f) General rule on response to report of an obstruction of view at a highway-rail or pathway grade crossing.	The estimated paperwork burden for this requirement is covered under § 234.305(a), (b), (c), and (d). Consequently, there is no additional burden associated with this requirement.				
—(g) General rule on response to report of other unsafe condition at a highway-rail or pathway grade crossing.	The estimated paperwork burden for this requirement is covered under § 234.305(a), (b), (c), and (d). Consequently, there is no additional burden associated with this requirement.				
—(h)(1) General rule on a maintaining railroad's responsibilities for receiving reports of unsafe conditions at highway-rail and pathway grade crossings—In general—Provision of contact information by maintaining RR to dispatching RR for reports of unsafe conditions at highway rail and pathway grade crossings.	621 railroads .....	12 contacts .....	1 minute .....	.20	14.38
—(h)(2) General rule on a maintaining railroad's responsibilities for receiving reports of unsafe conditions at highway-rail and pathway grade crossings—Exceptions for use of a third-party telephone service and answering machine by a maintaining railroad.	The estimated paperwork burden for this requirement is covered under § 234.307. Consequently, there is no additional burden associated with this requirement.				
234.306(a)—Multiple dispatching or maintaining railroads with respect to the same highway-rail or pathway grade crossing; appointment of responsible railroad—Duty of multiple dispatching railroads to appoint a primary dispatching railroad for the crossing.	465 railroads .....	50 appointment discussions.	60 minutes .....	50.00	3,872.00
—(b) Duty of multiple maintaining railroads to appoint a railroad responsible for the placement and maintenance of the Emergency Notification Systems (ENS) sign(s).	465 railroads .....	50 appointment discussions.	60 minutes .....	50.00	3,872.00
—(c) Duty of multiple maintaining railroads with respect to remedial action at the crossing.	The estimated paperwork burden for this requirement is covered under § 234.305(a)(2), (b)(2), (c)(2), and (d)(2). Consequently, there is no additional burden associated with this requirement.				
234.307(a)—Use of third-party telephone service by dispatching and maintaining railroads—General use of a third-party telephone service by a dispatching railroad.	The burden for information (tel. no., etc.) placed on the sign pursuant to § 234.309 is included under § 234.309 below. Consequently, there is no additional burden associated with this requirement.				
—(b) General use of a third-party telephone service by a maintaining railroad.	The estimated paperwork burden for this requirement has been fulfilled. Consequently, there is no additional burden associated with this requirement.				
—(c) Duties of third-party telephone service in contacting dispatching and maintaining railroads.	The estimated paperwork burden for this requirement is covered under § 234.303 or § 234.305. Consequently, there is no additional burden associated with this requirement.				
—(d)(1) Duties of railroad using third-party telephone service—Providing third-party telephone service with contact information.	621 railroads .....	2 contact calls .....	15 minutes .....	.50	38.72
—(d)(2) Duties of railroad using third-party telephone service—Written notice to FRA of intent to use third-party service.	621 railroads .....	2 letters .....	60 minutes .....	2.00	154.88
—(d)(3) Duties of railroad using third-party telephone service—Informing FRA of any changes in use or discontinuance of third-party service.	621 railroads .....	1 letter .....	60 minutes .....	1.00	77.44
—(e) Third-party telephone service and railroad responsibilities.	The estimated paperwork burden for recordkeeping is covered under §§ 234.313 and 234.315. Consequently, there is no additional burden associated with this requirement.				

Section <sup>2</sup>	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent wage <sup>3</sup> (D) = C *
234.309(a)—ENS Signs in general—Provision of information—Dispatching railroad for a highway-rail or pathway grade crossing to provide the maintaining railroad the telephone number that is to be displayed on the ENS sign at the crossing, not later than 180 calendar days before the date that implementation of an ENS is required.	621 railroads .....	12 contacts .....	10 minutes .....	2.00	154.88
234.311(c)—ENS sign placement and maintenance—Repair or replacement of ENS sign after discovery by responsible railroad of missing, damaged, or otherwise unusable/illegible sign to vehicular/pedestrian traffic.	621 railroads .....	4,000 replacement of missing or damaged signs.	15 minutes .....	1,000.00	59,680.00
234.313(a)–(d)—Recordkeeping .....	621 railroads .....	65,860 records of calls ....	10 minutes .....	10,976.67	850,033.32
234.315—Electronic recordkeeping .....	The estimated paperwork burden for this requirement is covered under § 234.313. Consequently, there is no additional burden associated with this requirement.				
Total .....	621 railroads .....	163,996 responses .....	N/A .....	13,649	985,062

*Total Estimated Annual Responses:*  
163,996.

*Total Estimated Annual Burden:*  
13,649 hours.

*Total Estimated Annual Burden Hour Dollar Cost Equivalent:* \$985,062.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

*Authority:* 44 U.S.C. 3501–3520.

**Brett A. Jortland,**

*Deputy Chief Counsel.*

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**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA–2022–0002–N–7]

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of information collection; request for comment.

<sup>2</sup> The current inventory exhibits a total burden of 15,317 hours while the total burden in this notice is 13,649 hours. As part of its review of this ICR renewal, FRA determined some of the previous estimates were initial estimates, outdated, or duplicative.

<sup>3</sup> For public respondents, FRA used an hourly rate of \$27 per hour for the value of the public's time. FRA obtained this data from the Department of Labor, Bureau of Labor Statistics. Additionally, for railroad respondents, the dollar equivalent cost is derived from the Surface Transportation Board's 2020 Full Year Wage A&B data series for railroad workers a 75-percent overhead charge.

**SUMMARY:** Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA will seek approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

**DATES:** Interested persons are invited to submit comments on or before June 27, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed ICR should be submitted on *regulations.gov* to the docket, Docket No. FRA–2022–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Ms. Hodan Wells, Information Collection Clearance Officer, at email: *Hodan.Wells@dot.gov* or telephone: (202) 493–0440, or Ms. Stephanie Anderson, Attorney Adviser, at email: *Stephanie.Anderson@dot.gov* or telephone: (202) 493–0445.

**SUPPLEMENTARY INFORMATION:** The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8–1320.12. Specifically, FRA invites interested

parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal statutes and regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a “user-friendly” format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

*Title:* Positive Train Control (PTC) and Other Signal Systems.

*OMB Control Number:* 2130–0553.

*Abstract:* On November 15, 2021, President Joseph R. Biden signed into law the Infrastructure Investment and

Jobs Act (IIJA).<sup>1</sup> Section 22414 of the Passenger Rail Expansion and Rail Safety Act of 2021, part of the IIJA, impacts FRA's existing Form FRA F 6180.152, the Biannual Report of PTC System Performance, which is one part of the existing information collection request under OMB Control No. 2130–0553. Section 22414 of the IIJA establishes the same reporting requirement as FRA's existing regulations, using the same FRA form number (Form FRA F 6180.152) and content requirements. 49 U.S.C. 20157(m); 49 CFR 236.1029(h). However, the statutory reporting cadence is quarterly, not biannual as FRA's regulations currently require.

During a recent rulemaking, FRA collected public comment on this reporting requirement. *See* 85 FR 82400 (Dec. 18, 2020) (Notice of Proposed Rulemaking); 86 FR 40154 (July 27, 2021) (Final Rule) (amending 49 CFR 236.1029(h) and creating Form FRA F 6180.152). During the comment period, FRA received seven sets of generally supportive comments from the following entities and individuals: The American Public Transportation Association; the Association of American Railroads and the American Short Line and Regional Railroad Association (jointly filed); the National Railroad Passenger Corporation (Amtrak); New Jersey Transit; and two individuals.

Feedback from the public and industry has already been incorporated into the existing Form FRA F 6180.152 that OMB approved in October 2021. *See* 49 CFR 236.1029(h). The substance of the form remains unchanged in light of the statutory requirements IIJA imposes, as the content required by FRA's existing regulations and Section 22414 of the IIJA are identical in substance. To implement Section 22414 of the IIJA, as codified at 49 U.S.C. 20157(m), the existing OMB-approved Form FRA F 6180.152 would need to be modified only to refer to the new quarterly reporting frequency.

Accordingly, FRA is hereby proposing to modify Form FRA F 6180.152 to align with the statutory quarterly framework under 49 U.S.C. 20157(m). The modified form would refer to the following quarterly reporting deadlines under 49

U.S.C. 20157(m)(3): April 30 (covering the period from January 1 to March 31), July 31 (covering the period from April 1 to June 30), October 31 (covering the period from July 1 to September 30), and January 31 (covering the period from October 1 to December 31 of the prior calendar year). *See* 49 U.S.C. 20157(m)(3). To be clear, in the interim, before OMB approves these statutory modifications to Form FRA F 6180.152, host railroads would continue to comply with the following biannual reporting deadlines for Form FRA F 6180.152 under FRA's existing regulations, 49 CFR 236.1029(h)(3): July 31 (covering the period from January 1 to June 30), and January 31 (covering the period from July 1 to December 31 of the prior calendar year). Railroads would transition to the quarterly frequency once OMB approves the modified Form FRA F 6180.152.

The only other modification FRA proposes to make to Form FRA F 6180.152 is to lock the formatting of instructions and headings in the form so users cannot manipulate those components of the form. FRA is placing the proposed, modified Form FRA F 6180.152 in Docket No. FRA–2022–0002 for review and interested persons are invited to submit comments on or before June 27, 2022.

For a detailed discussion regarding the reporting metrics in the proposed Quarterly Report of PTC System Performance (Form FRA F 6180.152), please see FRA's Final Rule outlining the comments received and corresponding content requirements under 49 CFR 236.1029(h). *See* 86 FR 40154, 40157–59, 40163–68 (July 27, 2021); *see also* 49 U.S.C. 20157(m). FRA may not alter the existing reporting requirements in Form FRA F 6180.152 as they are now statutorily mandated. As a reminder, modified Form FRA F 6180.152 would be identical in substance to existing, OMB-approved Form FRA F 6180.152 (Biannual Report of PTC System Performance) that the public commented on during the 2020–2021 PTC rulemaking. *See* 85 FR 82400 (Dec. 18, 2020) (Notice of Proposed Rulemaking); 86 FR 40154 (July 27, 2021) (Final Rule). The only material changes to Form FRA F 6180.152 FRA is proposing are those necessary to shift

from the biannual framework under FRA's regulations, 49 CFR 236.1029(h), to the new quarterly framework under 49 U.S.C. 20157(m)(3).

Under the currently approved biannual framework, FRA estimated that each performance report (Form FRA F 6180.152), covering a six-month period, would take 48 hours to prepare. *See* 86 FR at 40169–71. Under the new statutory quarterly framework, FRA estimates that, on average, each report, covering a shorter period (three months), would take 32 hours to prepare. This estimate is based on the fact that under the quarterly framework, the reporting period would be half as long and, correspondingly, it would take approximately half as long (*i.e.*, 24 hours) to compile the performance-related data for that period, plus an additional 8 hours to account for any additional administrative burdens in completing the form. Railroads will collect, analyze, and report 365 days' worth of data about their PTC systems' performance under either reporting framework (biannual or quarterly), and FRA estimates that shifting the frequency from biannual (under the existing regulation) to quarterly (under the recent legislation) would result in an increase of 73 reports per year and a burden increase of 1,168 hours total.

In addition, FRA notes that the Statutory Notification of PTC System Failures (Form FRA F 6180.177) expired by law on December 31, 2021, so FRA proposes to remove that form from this information collection request. *See* 49 U.S.C. 20157(j). That adjustment would result in a decrease of 144 reports per year and a burden decrease of 144 hours. In summary, FRA proposes two changes to the PRA table—*i.e.*, revising one line item (Form FRA F 6180.152) due to a program change and removing one line item (Form FRA F 6180.177) as it is no longer required by law and the burden associated with this requirement has been completed.

*Type of Request:* Revision to a currently approved collection.

*Affected Public:* Businesses.

*Form(s):* FRA F 6180.152.

*Respondent Universe:* 742 railroads.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

CFR section/subject <sup>2</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent <sup>3</sup>
235.6(c)—Expedited application for approval of certain changes described in this section.	42 railroads .....	10 expedited applications	5 hours .....	50	\$3,850
—Copy of expedited application to labor union .....	42 railroads .....	10 copies .....	30 minutes .....	5	385

<sup>1</sup> Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429 (Nov. 15, 2021). The IIJA

was funded in relevant part by the Consolidated

Appropriations Act of 2022, which was signed into law on March 15, 2022.

CFR section/subject <sup>2</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent <sup>3</sup>
—Railroad letter rescinding its request for expedited application of certain signal system changes.	42 railroads .....	1 letter .....	6 hours .....	6	462
—Revised application for certain signal system changes.	42 railroads .....	1 application .....	5 hours .....	0.5	385
—Copy of railroad revised application to labor union	42 railroads .....	1 copy .....	30 minutes .....	0.5	39
236.1—Railroad-maintained signal plans at all interlockings, automatic signal locations, and controlled points, and updates to ensure accuracy.	700 railroads .....	25 plan changes .....	15 minutes .....	6.25	481
236.15—Designation of automatic block, traffic control, train stop, train control, cab signal, and PTC territory in timetable instructions.	700 railroads .....	10 timetable instructions ..	30 minutes .....	5	385
236.18—Software management control plan—New railroads.	2 railroads .....	2 plans .....	160 hours .....	320	24,640
236.23(e)—The names, indications, and aspects of roadway and cab signals shall be defined in the carrier's Operating Rule Book or Special Instructions. Modifications shall be filed with FRA within 30 days after such modifications become effective.	700 railroads .....	2 modifications .....	1 hour .....	2	154
236.587(d)—Certification and departure test results	742 railroads .....	4,562,500 train departures	5 seconds .....	6,336.81	487,934
236.905(a)—Railroad Safety Program Plan (RSPP)—New railroads.	2 railroads .....	2 RSPPs .....	40 hours .....	80	6,160
236.913(a)—Filing and approval of a joint Product Safety Plan (PSP).	742 railroads .....	1 joint plan .....	2,000 hours .....	2,000	240,000
(c)(1)—Informational filing/petition for special approval.	742 railroads .....	0.5 filings/approval petitions.	50 hours .....	25	1,925
(c)(2)—Response to FRA's request for further data after informational filing.	742 railroads .....	0.25 data calls/documents	5 hours .....	1.25	96
(d)(1)(ii)—Response to FRA's request for further information within 15 days after receipt of the Notice of Product Development (NOPD).	742 railroads .....	0.25 data calls/documents	1 hour .....	0.25	19
(d)(1)(iii)—Technical consultation by FRA with the railroad on the design and planned development of the product.	742 railroads .....	0.25 technical consultations.	5 hours .....	1.25	96
(d)(1)(v)—Railroad petition to FRA for final approval of NOPD.	742 railroads .....	0.25 petitions .....	1 hour .....	0.25	19
(d)(2)(ii)—Response to FRA's request for additional information associated with a petition for approval of PSP or PSP amendment.	742 railroads .....	1 request .....	50 hours .....	50	3,850
(e)—Comments to FRA on railroad informational filing or special approval petition.	742 railroads .....	0.5 comments/letters .....	10 hours .....	5	385
(h)(3)(i)—Railroad amendment to PSP .....	742 railroads .....	2 amendments .....	20 hours .....	40	3,080
(j)—Railroad field testing/information filing document	742 railroads .....	1 field test document .....	100 hours .....	100	7,700
236.917(a)—Railroad retention of records: results of tests and inspections specified in the PSP.	13 railroads with PSP.	13 PSP safety results .....	160 hours .....	2,080	160,160
(b)—Railroad report that frequency of safety-relevant hazards exceeds threshold set forth in PSP.	13 railroads .....	1 report .....	40 hours .....	40	3,080
(b)(3)—Railroad final report to FRA on the results of the analysis and countermeasures taken to reduce the frequency of safety-relevant hazards.	13 railroads .....	1 report .....	10 hours .....	10	770
236.919(a)—Railroad Operations and Maintenance Manual (OMM).	13 railroads .....	1 OMM update .....	40 hours .....	40	3,080
(b)—Plans for proper maintenance, repair, inspection, and testing of safety-critical products.	13 railroads .....	1 plan update .....	40 hours .....	40	3,080
(c)—Documented hardware, software, and firmware revisions in OMM.	13 railroads .....	1 revision .....	40 hours .....	40	3,080
236.921 and 923(a)—Railroad Training and Qualification Program.	13 railroads .....	1 program .....	40 hours .....	40	3,080
236.923(b)—Training records retained in a designated location and available to FRA upon request.	13 railroads .....	350 records .....	10 minutes .....	58.33	4,491
236.1001(b)—A railroad's additional or more stringent rules than prescribed under 49 CFR part 236, subpart I.	38 railroads .....	1 rule or instruction .....	40 hours .....	40	4,800
236.1005(b)(4)(i)–(ii)—A railroad's submission of estimated traffic projections for the next 5 years, to support a request, in a PTC Implementation Plan (PTCIP) or a request for amendment (RFA), not to implement a PTC system based on reductions in rail traffic.	The burden is accounted for under 49 CFR 236.1009(a) and 236.1021.				
(b)(4)(iii)—A railroad's request for a <i>de minimis</i> exception, in a PTCIP or an RFA, based on a minimal quantity of poisonous-by-inhalation materials traffic.	7 Class I railroads	1 exception request .....	40 hours .....	40	3,080
(b)(5)—A railroad's request to remove a line from its PTCIP based on the sale of the line to another railroad and any related request for FRA review from the acquiring railroad.	The burden is accounted for under 49 CFR 236.1009(a) and 236.1021.				

CFR section/subject <sup>2</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent <sup>3</sup>
(g)(1)(i)—A railroad's request to temporarily reroute trains not equipped with a PTC system onto PTC-equipped tracks and vice versa during certain emergencies.	38 railroads .....	45 rerouting extension requests.	8 hours .....	360	27,720
(g)(1)(ii)—A railroad's written or telephonic notice of the conditions necessitating emergency rerouting and other required information under 236.1005(i).	38 railroads .....	45 written or telephonic notices.	2 hours .....	90	6,930
(g)(2)—A railroad's temporary rerouting request due to planned maintenance not exceeding 30 days.	38 railroads .....	720 requests .....	8 hours .....	5,760	443,520
(h)(1)—A response to any request for additional information from FRA, prior to commencing rerouting due to planned maintenance.	38 railroads .....	10 requests .....	2 hours .....	20	1,540
(h)(2)—A railroad's request to temporarily reroute trains due to planned maintenance exceeding 30 days.	38 railroads .....	160 requests .....	8 hours .....	1,280	98,560
236.1006(b)(4)(iii)(B)—A progress report due by December 31, 2020, and by December 31, 2022, from any Class II or III railroad utilizing a temporary exception under this section.	262 railroads .....	5 reports .....	16 hours .....	80	6,160
(b)(5)(vii)—A railroad's request to utilize different yard movement procedures, as part of a freight yard movements exception.	The burden is accounted for under 49 CFR 236.1015 and 236.1021.				
236.1007(b)(1)—For any high-speed service over 90 miles per hour (mph), a railroad's PTC Safety Plan (PTCSP) must additionally establish that the PTC system was designed and will be operated to meet the fail-safe operation criteria in appendix C.	The burden is accounted for under 49 CFR 236.1015 and 236.1021.				
(c)—An HSR-125 document accompanying a host railroad's PTCSP, for operations over 125 mph.	38 railroads .....	1 HSR-125 document .....	3,200 hours .....	3,200	384,000
(c)(1)—A railroad's request for approval to use foreign service data, prior to submission of a PTCSP.	38 railroads .....	0.33 requests .....	8,000 hours .....	2,640	203,280
(d)—A railroad's request in a PTCSP that FRA excuse compliance with one or more of this section's requirements.	38 railroads .....	1 request .....	1,000 hours .....	1,000	120,000
236.1009(a)(2)—A PTCIP if a railroad becomes a host railroad of a main line requiring the implementation of a PTC system, including the information under 49 U.S.C. 20157(a)(2) and 49 CFR 236.1011.	264 railroads .....	1 PTCIP .....	535 hours .....	535	64,200
(a)(3)—Any new PTCIPs jointly filed by a host railroad and a tenant railroad.	264 railroads .....	1 joint PTCIP .....	267 hours .....	267	32,040
(b)(1)—A host railroad's submission, individually or jointly with a tenant railroad or PTC system supplier, of an unmodified Type Approval.	264 railroads .....	1 document .....	8 hours .....	8	616
(b)(2)—A host railroad's submission of a PTC Development Plan (PTCDP) with the information required under 49 CFR 236.1013, requesting a Type Approval for a PTC system that either does not have a Type Approval or has a Type Approval that requires one or more variances.	264 railroads .....	1 PTCDP .....	2,000 hours .....	2,000	154,000
(d)—A host railroad's submission of a PTCSP .....	The burdens are accounted for under 49 CFR 236.1015.				
(e)(3)—Any request for full or partial confidentiality of a PTCIP, Notice of Product Intent (NPI), PTCDP, or PTCSP.	38 railroads .....	10 confidentiality requests	8 hours .....	80	6,160
(h)—Any responses or documents submitted in connection with FRA's use of its authority to monitor, test, and inspect processes, procedures, facilities, documents, records, design and testing materials, artifacts, training materials and programs, and any other information used in the design, development, manufacture, test, implementation, and operation of the PTC system, including interviews with railroad personnel.	38 railroads .....	36 interviews and documents.	4 hours .....	144	11,088
(j)(2)(iii)—Any additional information provided in response to FRA's consultations or inquiries about a PTCDP or PTCSP.	38 railroads .....	1 set of additional information.	400 hours .....	400	30,800
236.1011(a)–(b)—PTCIP content requirements .....	The burdens are accounted for under 49 CFR 236.1009(a) and (e) and 236.1021.				
(e)—Any public comment on PTCIPs, NPIs, PTCDPs, and PTCSPs.	38 railroads .....	2 public comments .....	8 hours .....	16	1,232
236.1013—PTCDP and NPI content requirements ...	The burdens are accounted for under 49 CFR 236.1009(b), (c), and (e) and 236.1021.				
236.1015—Any new host railroad's PTCSP meeting all content requirements under 49 CFR 236.1015.	264 railroads .....	1 PTCSP .....	8,000 hours .....	8,000	616,000

CFR section/subject <sup>2</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent <sup>3</sup>
(g)—A PTCSP for a PTC system replacing an existing certified PTC system.	38 railroads .....	0.33 PTCSPs .....	3,200 hours .....	1,056	81,312
(h)—A quantitative risk assessment, if FRA requires one to be submitted.	38 railroads .....	0.33 assessments .....	800 hours .....	264	20,328
236.1017(a)—An independent third-party assessment, if FRA requires one to be conducted and submitted.	38 railroads .....	0.33 assessments .....	1,600 hours .....	528	63,360
(b)—A railroad's written request to confirm whether a specific entity qualifies as an independent third party.	38 railroads .....	0.33 written requests .....	8 hours .....	2.64	203
—Further information provided to FRA upon request	38 railroads .....	0.33 sets of additional information.	20 hours .....	6.6	508
(d)—A request not to provide certain documents otherwise required under Appendix F for an independent, third-party assessment.	38 railroads .....	0.33 requests .....	20 hours .....	6.6	508
(e)—A request for FRA to accept information certified by a foreign regulatory entity for purposes of 49 CFR 236.1017 and/or 236.1009(i).	38 railroads .....	0.33 requests .....	32 hours .....	10.56	813
236.1019(b)—A request for a passenger terminal main line track exception (MTEA).	38 railroads .....	1 MTEA .....	160 hours .....	160	12,320
(c)(1)—A request for a limited operations exception (based on restricted speed, temporal separation, or a risk mitigation plan).	38 railroads .....	1 request and/or plan .....	160 hours .....	160	12,320
(c)(2)—A request for a limited operations exception for a non-Class I, freight railroad's track.	10 railroads .....	1 request .....	160 hours .....	160	12,320
(c)(3)—A request for a limited operations exception for a Class I railroad's track.	7 railroads .....	1 request .....	160 hours .....	160	12,320
(d)—A railroad's collision hazard analysis in support of an MTEA, if FRA requires one to be conducted and submitted.	38 railroads .....	0.33 collision hazard analysis.	50 hours .....	16.5	1,271
(e)—Any temporal separation procedures utilized under the 49 CFR 236.1019(c)(1)(ii) exception.	The burdens are accounted for under 49 CFR 236.1019(c)(1).				
236.1021(a)–(d)—Any RFA to a railroad's PTCIP or PTCDP.	38 railroads .....	10 RFAs .....	160 hours .....	1,600	123,200
(e)—Any public comments, if an RFA includes a request for approval of a discontinuance or material modification of a signal or train control system and a FEDERAL REGISTER notice is published.	5 interested parties	10 RFA public comments	16 hours .....	160	12,320
(l)—Any jointly filed RFA to a PTCIP or PTCSP ....	The burdens are accounted for under 49 CFR 236.1021(a)–(d) and (m).				
(m)—Any RFA to a railroad's PTCSP .....	38 railroads .....	15 RFAs .....	80 hours .....	1,200	92,400
236.1023(a)—A railroad's PTC Product Vendor List, which must be continually updated.	38 railroads .....	2 updated lists .....	8 hours .....	16	1,232
(b)(1)—All contractual arrangements between a railroad and its hardware and software suppliers or vendors for certain immediate notifications.	The burdens are accounted for under 49 CFR 236.1015 and 236.1021.				
(b)(2)–(3)—A vendor's or supplier's notification, upon receipt of a report of any safety-critical failure of its product, to any railroads using the product.	10 vendors or suppliers.	10 notifications .....	8 hours .....	80	6,160
(c)(1)–(2)—A railroad's process and procedures for taking action upon being notified of a safety-critical failure or a safety-critical upgrade, patch, revision, repair, replacement, or modification, and a railroad's configuration/revision control measures, set forth in its PTCSP.	The burdens are accounted for under 49 CFR 236.1015 and 236.1021.				
(d)—A railroad's submission, to the applicable vendor or supplier, of the railroad's procedures for action upon notification of a safety-critical failure, upgrade, patch, or revision to the PTC system and actions to be taken until it is adjusted, repaired, or replaced.	38 railroads .....	2.5 notifications .....	16 hours .....	40	3,080
(e)—A railroad's database of all safety-relevant hazards, which must be maintained after the PTC system is placed in service.	38 railroads .....	38 database updates .....	16 hours .....	608	46,816
(e)(1)—A railroad's notification to the vendor or supplier and FRA if the frequency of a safety-relevant hazard exceeds the threshold set forth in the PTCIP and PTCSP, and about the failure, malfunction, or defective condition that decreased or eliminated the safety functionality.	38 railroads .....	8 notifications .....	8 hours .....	64	4,928
(e)(2)—Continual updates about any and all subsequent failures.	38 railroads .....	1 update .....	8 hours .....	8	616

CFR section/subject <sup>2</sup>	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent <sup>3</sup>
(f)—Any notifications that must be submitted to FRA under 49 CFR 236.1023.	The burdens are accounted for under 49 CFR 236.1023(e), (g), and (h).				
(g)—A railroad's and vendor's or supplier's report, upon FRA request, about an investigation of an accident or service difficulty due to a manufacturing or design defect and their corrective actions.	38 railroads .....	0.5 reports .....	40 hours .....	20	1,540
(h)—A PTC system vendor's or supplier's reports of any safety-relevant failures, defective conditions, previously unidentified hazards, recommended mitigation actions, and any affected railroads.	10 vendors or suppliers.	20 reports .....	8 hours .....	160	12,320
(k)—A report of a failure of a PTC system resulting in a more favorable aspect than intended or other condition hazardous to the movement of a train, including the reports required under part 233.	The burdens are accounted for under 49 CFR 236.1023(e), (g), and (h) and 49 CFR part 233.				
236.1029(b)(4)—A report of an en route failure, other failure, or cut out to a designated railroad officer of the host railroad.	150 host and tenant railroads.	1,000 reports .....	30 minutes .....	500	38,500
Form FRA F 6180.152—49 U.S.C. 20157(m) and 49 CFR 236.1029(h)—Quarterly Report of PTC System Performance (*Revised requirement and updated form*).	38 railroads .....	146 reports .....	32 hours .....	4,672	359,744
236.1033—Communications and security requirements.	The burdens are accounted for under 49 CFR 236.1009 and 236.1015.				
236.1035(a)–(b)—A railroad's request for authorization to field test an uncertified PTC system and any responses to FRA's testing conditions.	38 railroads .....	10 requests .....	40 hours .....	400	30,800
236.1037(a)(1)–(2)—Records retention .....	The burdens are accounted for under 49 CFR 236.1009 and 236.1015.				
(a)(3)–(4)—Records retention .....	The burdens are accounted for under 49 CFR 236.1039 and 236.1043(b).				
(b)—Results of inspections and tests specified in a railroad's PTCSP and PTCDP.	38 railroads .....	800 records .....	1 hour .....	800	61,600
(c)—A contractor's records related to the testing, maintenance, or operation of a PTC system maintained at a designated office.	20 contractors .....	1,600 records .....	10 minutes .....	266.67	20,534
(d)(3)—A railroad's final report of the results of the analysis and countermeasures taken to reduce the frequency of safety-related hazards below the threshold set forth in the PTCSP.	38 railroads .....	8 final reports .....	160 hours .....	1,280	98,560
236.1039(a)–(c), (e)—A railroad's PTC OMM, which must be maintained and available to FRA upon request.	38 railroads .....	2 OMM updates .....	10 hours .....	20	1,540
(d)—A railroad's identification of a PTC system's safety-critical components, including spare equipment.	38 railroads .....	1 identified new component.	1 hour .....	1	77
236.1041(a)–(b) and 236.1043(a)—A railroad's PTC Training and Qualification Program (i.e., a written plan).	38 railroads .....	2 programs .....	10 hours .....	20	1,540
236.1043(b)—Training records retained in a designated location and available to FRA upon request.	150 host and tenant railroads.	150 PTC training record databases.	1 hour .....	150	11,550
Total .....	N/A .....	4,567,826 responses .....	N/A .....	51,993	4,329,155

*Total Estimated Annual Responses:*  
4,567,826.

<sup>2</sup> The current inventory exhibits a total burden of 50,969 hours and 4,567,897 responses, while the total burden in this notice is 51,993 hours and 4,567,826 responses. The change in burden is due both to a program change (an increase) and one adjustment (a decrease) as described above in the abstract section.

<sup>3</sup> The dollar equivalent cost is derived from the 2019 STB Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge. For Executives, Officials, and Staff Assistants, this cost amounts to \$120 per hour. For Professional/Administrative staff, this cost amounts to \$77 per hour.

*Total Estimated Annual Burden:*  
51,993 hours.

*Total Estimated Annual Burden Hour Dollar Cost Equivalent:* \$4,329,155.

FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information that does not display a currently valid OMB control number.

*Authority:* 44 U.S.C. 3501–3520; 49 U.S.C. 20157.

**Brett A. Jortland,**  
*Deputy Chief Counsel.*

[FR Doc. 2022–09142 Filed 4–27–22; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of persons whose property and interests in property have been unblocked and have been removed from the list of Specially Designated Nationals and Blocked Persons.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective dates.

**FOR FURTHER INFORMATION CONTACT:**

OFAC: Associate Director for Global Targeting, tel: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

**SUPPLEMENTARY INFORMATION:****Electronic Availability**

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

**Notice of OFAC Actions**

On April 22, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and they have been removed from the SDN List.

**Individuals**

1. BOLIVAR ZAPATA, Gustavo; DOB 23 Dec 1976; POB Pereira, Risaralda, Colombia; Cedula No. 18513577 (Colombia) (individual) [SDNTK].

2. FLORES CHAVEZ, Kevin Sebastian, Calle Tchaikovsky 474, Col. Arcos de Guadalupe, Zapopan, Jalisco, Mexico; DOB 01 Mar 1995; POB Jalisco, Mexico; citizen Mexico; Gender Male; R.F.C. FOCK950301E94 (Mexico); C.U.R.P. FOCK950301HJCLHV00 (Mexico) (individual) [SDNTK] (Linked To: FLORES DRUG TRAFFICKING ORGANIZATION; Linked To: BOUNGALOWS VILLA AZUL, S.A. DE C.V.).

3. MORA RICARDO, Daniel Alberto, c/o SOCIEDAD SUPERDEPORTES LTDA., Bogota, Colombia; c/o ABS HEALTH CLUB SA, Bogota, Colombia; Miami, FL, United States; DOB 08 Jan 1965; nationality Colombia; citizen Colombia; Cedula No. 80408253 (Colombia); SSN 027-68-4733 (United States); Driver's License No. M600161650080 (United States) issued 07 Apr 2006 expires 08 Jan 2011 (individual) [SDNT].

4. PEREZ SANTORO, Roberto Javier (a.k.a. PEREZ SANTORO, Javier),

Buenos Aires, Argentina; DOB 10 Sep 1983; POB Buenos Aires, Argentina; nationality Argentina; Gender Male; Passport AAB523976 (Argentina); D.N.I. 30312556 (Argentina) (individual) [SDNTK] (Linked To: SMILE TECHNOLOGIES S.A.; Linked To: SMILE PROPERTY & TRAVEL LTD; Linked To: SMILEWALLET S.A.S.; Linked To: SMILEWALLET B.V.).

5. ZAMBADA NIEBLA, Vicente (a.k.a. SOTELO GUZMAN, Vicente; a.k.a. ZAMBADA NIEBLA, Jesus Vicente; a.k.a. ZAMBADA NIEBLA, Vincente; a.k.a. "EL MAYITO"), c/o NUEVA INDUSTRIA DE GANADEROS DE CULIACAN S.A. DE C.V., Culiacan, Sinaloa, Mexico; c/o ESTABLO PUERTO RICO S.A. DE C.V., Culiacan, Sinaloa, Mexico; 4852 Palma Cocotera, Colonia Las Palmas, Culiacan, Sinaloa, Mexico; Calle Ciudad de Hermosillo #1168, Fraccionamiento Las Quintas, Culiacan, Sinaloa 80060, Mexico; DOB 24 Mar 1975; POB Sinaloa, Mexico; nationality Mexico; citizen Mexico; Passport 97040021871 (Mexico); R.F.C. ZANV-750324-NY5 (Mexico) (individual) [SDNTK].

6. ZEVALLOS GONZALES DE ARREDONDO, Maria del Rosario, c/o AVIANDINA S.A.C., Lima, Peru; c/o PERUVIAN PRECIOUS METALS S.A.C., Lima, Peru; Aldabas MZ. 53, LT. 25, Las Gardenias, Lima, Peru; DOB 26 Jun 1956; LE Number 09138069 (Peru) (individual) [SDNTK].

**Entities**

1. ABS HEALTH CLUB S.A., Carrera 10 No. 93A-27, Bogota, Colombia; NIT #830121474-8 (Colombia) [SDNT].

2. MULTISERVICIOS JEVIZ S.A. DE C.V. (a.k.a. JEVIZ), Carretera a El Dorado #2501, Colonia Campo El Diez, Culiacan, Sinaloa 80155, Mexico [SDNTK].

Dated: April 22, 2022.

**Gregory T. Gatjanis,**

*Associate Director, Office of Global Targeting, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2022-09009 Filed 4-27-22; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF THE TREASURY****Office of Foreign Assets Control****Notice of OFAC Sanctions Actions**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update

to the identifying information of a person currently included in OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for effective date(s).

**FOR FURTHER INFORMATION CONTACT:**

OFAC: Andrea Gacki, Director, tel.: 202-622-2490; Associate Director for Global Targeting, tel.: 202-622-2420; Assistant Director for Licensing, tel.: 202-622-2480; Assistant Director for Regulatory Affairs, tel.: 202-622-4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202-622-2490.

**SUPPLEMENTARY INFORMATION:****Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (<https://www.treasury.gov/ofac>).

**Notice of OFAC Actions**

On April 21, 2022, OFAC updated the SDN List entry for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked.

**Entity:**

1. LAZARUS GROUP (a.k.a. "APPLEWORM"; a.k.a. "APT-C-26"; a.k.a. "GROUP 77"; a.k.a. "GUARDIANS OF PEACE"; a.k.a. "HIDDEN COBRA"; a.k.a. "OFFICE 91"; a.k.a. "RED DOT"; a.k.a. "TEMP.HERMIT"; a.k.a. "THE NEW ROMANTIC CYBER ARMY TEAM"; a.k.a. "WHOIS HACKING TEAM"; a.k.a. "ZINC"), Potonggang District, Pyongyang, Korea, North; Digital Currency Address—ETH 0x098B716B8Aaf21512996d C57EB0615e2383E2f96; Digital Currency Address—ETH 0xa0e1c89Ef1a489c9C7d E96311eD5Ce5D32c20E4B; Digital Currency Address—ETH 0x3CffD56B47B7b41c56258 D9C7731ABaDc360E073; Digital Currency Address—ETH 0x53b6936513e738f44FB 50d2b9476730C0Ab3Bfc1; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 [DPRK3].

Dated: April 22, 2022.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2022-09073 Filed 4-27-22; 8:45 am]

**BILLING CODE 4810-AL-P**

**DEPARTMENT OF THE TREASURY****Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Financial Crimes Enforcement Network Information Collection Requests**

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments must be received on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the submissions may be obtained from Molly Stasko by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622-8922, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**SUPPLEMENTARY INFORMATION:****Financial Crimes Enforcement Network (FinCEN)**

1. *Title:* Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process (31 CFR 1010.630).

*OMB Control Number:* 1506-0043.

*Type of Review:* Extension of a currently approved collection.

*Description:* The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act). The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1960, 31 U.S.C. 5311-5314 and 5316-5336, and includes notes

thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures. Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

31 U.S.C. 5318(j) prohibits covered financial institutions from maintaining correspondent accounts in the United States for, or on behalf of, foreign banks that do not have a physical presence in any country. In addition, under 31 U.S.C. 5318(k), a covered financial institution maintaining a correspondent account in the United States for a foreign bank, must retain records identifying (i) the owners of record and the beneficial owners of the foreign bank, and (ii) the name and address of a person residing in the United States who is authorized to accept service of legal process for the foreign bank. The regulations implementing 31 U.S.C. 5318(j) and 31 U.S.C. 5318(k) appear at 31 CFR 1010.630.

31 CFR 1010.630(a)(1) prohibits covered financial institutions from establishing, maintaining, administering, or managing correspondent accounts in the United States for, or on behalf of, foreign shell banks. Covered financial institutions must take reasonable steps to ensure that any correspondent account managed by a covered financial institution in the United States is not being used by a foreign bank to indirectly provide banking services to a foreign shell bank.

31 CFR 1010.630(a)(2) implements 31 U.S.C. 5318(k) and requires covered financial institutions that maintain correspondent accounts in the United States for foreign banks to retain records in the United States identifying: (i) The owners of each such foreign bank whose shares are not publicly traded, with one exception; and (ii) the name and street address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process for records regarding each such account.

31 CFR 1010.630(b) clarifies that a covered financial institution will be deemed to be in compliance with the requirements of 31 CFR 1010.630(a)

with respect to a foreign bank if the covered financial institution obtains, at least once every three years, a certification or recertification from the foreign bank. FinCEN has developed an optional certification form that includes a request to the foreign bank for the information required under 31 CFR 1010.630(a). Covered financial institutions may use the certification form to obtain the necessary information for an initial certification and a recertification.

31 CFR 1010.630(c) requires a covered financial institution to request that a foreign bank verify or correct the information provided in such bank's certification or recertification, if the covered financial institution knows, suspects, or has reason to suspect that such information is incorrect or no longer accurate. Additionally, the covered financial institution may take other appropriate measures to ascertain the accuracy of the information or obtain the correct information.

If a covered financial institution has not obtained a certification, recertification, or information needed for a certification or recertification within 30 calendar days after the date the account is established, and at least once every three years thereafter, the covered financial institution must close all such foreign bank's correspondent accounts within a commercially reasonable time, and must restrict the foreign bank's ability to execute any new transactions other than those necessary to close the account. Furthermore, if a covered financial institution conducting an interim verification pursuant to 31 CFR 1010.630(c), has not obtained verification of the information or corrected information within 90 calendar days after the date of undertaking the interim verification, the covered financial institution must follow the same account closure procedures set out above.

31 CFR 1010.630(d)(4) prohibits covered financial institutions from: (i) Re-establishing any account closed pursuant to 31 CFR 1010.630(d); and (ii) establishing any other correspondent account with the foreign bank whose account was closed, unless the foreign bank provides the appropriate certification or recertification. 31 CFR 1010.630(d)(5) states that a covered financial institution will not be held liable for terminating a correspondent account in accordance with 31 CFR 1010.630(d).

31 CFR 1010.630(e) requires covered financial institutions to retain any original document provided by a foreign bank, and the original or a copy of any

document otherwise relied upon by a covered financial institution for purposes of complying with 31 CFR 1010.630, for at least five years after the date that a covered financial institution no longer maintains any correspondent account for such foreign bank.

**Form Number:** Optional form—certification and re-certification regarding correspondent accounts for foreign banks.

**Affected Public:** Businesses and other for-profits.

**Estimated Number of Respondents:** 8,696.

**Frequency of Response:** As required.

**Estimated Total Annual Burden**

**Hours:** 260,880 hours.

**2. Title:** Additional records to be made and retained by casinos (31 CFR 1021.410).

**OMB Control Number:** 1506–0054.

**Type of Review:** Extension without change of a current OMB approval.

**Description:** The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107–56 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act). The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, 31 U.S.C. 5311–5314 and 5316–5336, and notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury (the Secretary), *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures. Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

With respect to each deposit, account, or line of credit, 31 CFR 1021.410(a) requires a casino to secure and maintain a record of the name, permanent address (“address”), and social security number (SSN) of the person involved at the time the funds are deposited, the account is opened, or credit is extended. Where the deposit, account, or line of credit is in the name of two or more persons, the casino must secure the name, address,

and SSN of each person having a financial interest in the deposit, account, or line of credit. The casino is required to verify the name and address of such person(s) at the time the deposit is made, the account is opened, or credit is extended, by the examination of a document as described in 31 CFR 1010.312. The specific identifying information relied upon must be recorded by the casino in the manner described in 31 CFR 1010.312. If a casino is unable to secure the required SSNs, the casino will not be deemed to be in violation of 31 CFR 1021.410 if the casino has made reasonable efforts to secure the SSNs and it maintains a list of the names and addresses of those persons from whom the casino was unable to obtain the SSNs. The casino must make the list available to the Secretary upon request. If a person is a nonresident alien, the casino is also required to record the person’s passport number or a description of another government document used to verify his/her identity.

Under 31 CFR 1021.410(b), a casino must retain either the original or a copy of each of the following:

- A record of each time the casino receives funds for credit to or deposit into any person’s account, including the name, address, and SSN of the person from whom the casino receives the funds, the date of receipt of the funds and the amount received. If the person from whom the funds were received is a non-resident alien, the casino is required to obtain and record the person’s passport number or a description of another government document used to verify the person’s identity;
- A record of each bookkeeping entry made to a customer’s deposit or credit account with the casino;
- Each statement, ledger card, or other record of each deposit or credit account with the casino, showing each transaction in or with respect to a customer’s account with the casino;
- A record of each extension of credit in excess of \$2,500, the terms and conditions of each such extension of credit, and repayments. The record must include the customer’s name, address, SSN, and the date and amount of the transaction (including repayments). If the credit is extended to a non-resident alien, the casino must obtain and record the non-resident alien’s passport number or a description of another government document used to verify identity;
- A record of each advice, request or instruction received or given by the casino with respect to a transaction involving a person, account, or place

outside the United States. If the transaction is a transfer outside the United States on behalf of a third party, the record must include the third party’s name, address, SSN, signature, and the date and amount of the transaction. If the transaction is a transfer received from outside the United States on behalf of a third party, the same records must be obtained with regard to the third party;

- Records prepared or received by the casino in the ordinary course of business that would be needed to reconstruct a person’s deposit or credit account with the casino or that would be needed to trace a check deposited with the casino through the casino’s records to the bank of deposit;

- All records, documents, or manuals required to be maintained by a casino under state and local laws or regulations, and regulations of any governing Indian tribe or tribal government;

- All records which are prepared or used by a casino to monitor a customer’s gaming activity;

- A separate record containing a list of each transaction between the casino and its customers involving the following types of instruments having a face value of \$3,000 or more: (i) Personal checks; (ii) business checks; (iii) official bank checks; (iv) cashier’s checks; (v) third-party checks; (vi) promissory notes; (vii) traveler’s checks; and (viii) money orders. The list must contain the time, date, and amount of the transaction; the name and address of the customer; the type of instrument; the name of the drawee or issuer of the instrument; all reference numbers (*e.g.*, casino account number, personal check number, etc.); and the name or casino license number of the casino employee who conducted the transaction. A casino must place applicable transactions on the list in the chronological order in which they occur;

- A copy of the compliance program described in 31 CFR 1021.210(b); and

- For card clubs only, records of all currency transactions by customers, including, without limitation, records in the form of currency transaction logs and multiple currency transaction logs, and records of all activity at cages or similar facilities, including cage control logs.

Under 31 CFR 1021.410(c), casinos that input, store, or retain, in whole or in part, for any period of time, any record required to be maintained by 31 CFR 1010.410 or 31 CFR 1021.410 on computer disk, tape, or other machine-readable media must retain those records in the same format. All indexes,

books, programs, record layouts, manuals, formats, instructions, file descriptions, and similar materials that would enable a person to readily access and review the records described in 31 CFR 1010.410 and 31 CFR 1021.410, and that are recorded, stored, or retained on computer disk, tape or other machine-readable media, must be retained for the period of time such records are required to be retained.

*Form Number:* None.

*Affected Public:* Businesses or other for-profits.

*Estimated Number of Respondents:* 993.

*Frequency of Response:* As required.

*Estimated Total Annual Burden*

*Hours:* 128,637 hours.

3. *Title:* Reporting obligations on foreign bank relationships with Iranian-linked financial institutions designated under IEEPA and IRGC-linked persons designated under IEEPA (31 CFR 1060.300).

*OMB Control Number:* 1506-0066.

*Type of Review:* Extension of a currently approved collection.

*Description:* The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Financial Transactions Reporting Act of 1970, as amended by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Public Law 107-56 (October 26, 2001), and other legislation, including most recently the Anti-Money Laundering Act of 2020 (AML Act). The BSA is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1960, 31 U.S.C. 5311-5314 and 5316-5336, and includes notes thereto, with implementing regulations at 31 CFR chapter X.

The BSA authorizes the Secretary of the Treasury, *inter alia*, to require financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement AML programs and compliance procedures. Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) amended the Iran Sanctions Act of 1996 by expanding economic sanctions against Iran. To comply with the Congressional mandate to prescribe regulations under section

104(e) of CISADA and consistent with its statutory mission under 31 U.S.C. 310, FinCEN issued a regulation requiring a U.S. bank that maintains a correspondent account for a specified foreign bank to ask of the foreign bank, and report to FinCEN, certain information about transactions or other financial services provided by that foreign bank. Under the regulation, U.S. banks are only required to report this information to FinCEN upon receiving a specific written request from FinCEN ("CISADA Request"). The regulation implementing section 104(e) of CISADA appears at 31 CFR 1060.300.

#### (a) General

Upon receiving a CISADA Request, a U.S. bank that maintains a correspondent account for a specified foreign bank is required under 31 CFR 1060.300(a) to inquire of the foreign bank, and report to FinCEN: (i) Any correspondent account maintained by such foreign bank for an Iranian-linked financial institution designated under IEEPA ("Iranian-linked Financial Institution"); (ii) any direct or indirect transfer of funds for or on behalf of an Iranian-linked Financial Institution processed by such foreign bank within the preceding 90 calendar days, other than through a correspondent account; (iii) and any direct or indirect transfer of funds for or on behalf of an IRGC-linked person designated under IEEPA ("IRGC-linked Person") processed by such foreign bank within the preceding 90 calendar days.

#### (b) Duty To Inquire

31 CFR 1060.300(b) requires that, upon receiving a CISADA Request, a U.S. bank that maintains a correspondent account for a specified foreign bank must contact the foreign bank and request that the foreign bank certify whether it: (i) Maintains a correspondent account for an Iranian-linked Financial Institution; (ii) has processed one or more transfers of funds within the preceding 90 calendar days, directly or indirectly, for or on behalf of an Iranian-linked Financial Institution, other than through a correspondent account; and (iii) has processed one or more transfer of funds within the preceding 90 calendar days, directly or indirectly, for or on behalf of an IRGC-linked Person. In addition, at the time the U.S. bank contacts the foreign bank, the U.S. bank is required to request that the foreign bank agree to notify the U.S. bank if the foreign bank subsequently establishes a new correspondent account for an Iranian-linked Financial Institution within 365 calendar days

from the date of the foreign bank's initial response.

FinCEN has developed an optional certification form that includes a request to the foreign bank for information required under 31 CFR 1060.300. U.S. banks may use the certification form to obtain the necessary information from the foreign bank.

#### (c) Filing Procedures

Upon receiving a CISADA Request, 31 CFR 1060.300(c)(1) requires that a U.S. bank report to FinCEN, in the format and manner prescribed by FinCEN, the following information for any specified foreign banks for which the U.S. bank maintains correspondent accounts:

- The name of any foreign bank that certifies that it maintains a correspondent account for an Iranian-linked Financial Institution, and the following related information: The name of the Iranian-linked Financial Institution; the full name(s) on the correspondent account and the correspondent account number(s); any information regarding whether the correspondent account has been blocked or restricted; other applicable identifying information for the correspondent account; and the approximate value in U.S. dollars of transactions processed through the correspondent account within the preceding 90 calendar days;

- The name of any foreign bank that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked Financial Institution, other than through a correspondent account, and the following related information: The name of the Iranian-linked Financial Institution; the identity of the system or means by which such transfer(s) of funds was processed; the full name on the account(s) and the account number(s), other applicable identifying information for such transfer(s) of funds; and the approximate value in U.S. dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

- The name of any foreign bank that certifies that it has processed one or more transfers of funds within the preceding 90 calendar days directly or indirectly for or on behalf of an IRGC-linked Person, and the following related information: The name of the IRGC-linked Person; the identity of the system or means by which such transfer(s) of funds was processed; the full name on the account(s) and the account number(s); other applicable identifying information for such transfer(s) of funds; and the approximate value in U.S.

dollars of such transfer(s) of funds processed within the preceding 90 calendar days;

- The name of any foreign bank that certifies that it does not maintain a correspondent account for an Iranian-linked Financial Institution; that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days for or on behalf of, directly or indirectly, an Iranian-linked Financial Institution, other than through a correspondent account; and/or that certifies that to its knowledge it has not processed one or more transfers of funds within the preceding 90 calendar days directly or indirectly for or on behalf of an IRGC-linked Person;

- The name of any foreign bank for which the U.S. bank is unable to determine if the foreign bank: (i) Maintains a correspondent account for an Iranian-linked Financial Institution; (ii) has processed one or more transfers of funds within the preceding 90 calendar days directly or indirectly for or on behalf of an Iranian-linked Financial Institution, other than through a correspondent account; and/or (iii) has processed one or more transfers of funds within the preceding 90 calendar days directly or indirectly for or on behalf of an IRGC-linked Person. In addition, the U.S. bank must provide an explanation of the reason(s) the U.S. bank cannot determine if the foreign bank has provided financial services to an Iranian-linked Financial Institution or an IRGC-linked Person, for example, if the foreign bank fails to respond to a request from the U.S. bank;

- The name of any foreign bank that notifies the U.S. bank that it has established a new correspondent account for an Iranian-linked Financial Institution at any time within 365 calendar days from the date of the foreign bank's initial response, and the following related information: The name of the Iranian-linked Financial Institution; the full name(s) on the correspondent account and the correspondent account number(s); applicable information regarding whether the correspondent account has been blocked or restricted; and other applicable identifying information for the correspondent account;

- If applicable, confirmation that the U.S. bank does not maintain a correspondent account for the foreign bank(s), but only in instances in which FinCEN specifically requests that the U.S. bank report such information; and

- If applicable, the name of any foreign bank that provides a certification to the U.S. bank more than 45 calendar days after the date of FinCEN's request,

along with all applicable related information associated with that certification.

31 CFR 1060.300(c)(2) requires that a U.S. bank report to FinCEN within 45 calendar days of receipt of a CISADA Request. U.S. banks must also report to FinCEN within 10 calendar days of receipt of any subsequent notifications received from a foreign bank regarding the establishment of a new correspondent account for an Iranian-linked Financial Institution. For reports based on certifications received from a foreign bank after the 45 calendar day deadline, U.S. banks are required to report to FinCEN within 10 calendar days of receipt of the certification.

*(d) Retention of Records*

31 CFR 1060.300(d) requires that U.S. banks maintain a copy of any report filed and the original or any business record equivalent of any supporting documentation for a report, including a foreign bank certification or other responses to a FinCEN inquiry pursuant to 31 CFR 1060.300, for a period five years.

*(e) No Other Action Required*

31 CFR 1060.300(e) states that nothing under 31 CFR 1060.300 shall be construed to require a U.S. bank to take any action, or to decline to take any action, other than the requirements identified in 31 CFR 1060.300, with respect to an account established for, or a transaction engaged in with, a foreign bank. However, nothing in 31 CFR 1060.300 relieves a U.S. bank of any other applicable regulatory obligations.

*Form Number:* Optional form—certification regarding correspondent accounts for foreign banks.

*Affected Public:* Businesses and other for-profits.

*Estimated Number of Respondents:* 5,164.

*Frequency of Response:* As required.

*Estimated Number of Responses:* 1,040.

*Estimated Total Annual Burden Hours:* 1,820 hours.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Molly Skasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–09098 Filed 4–27–22; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Fiscal Service Information Collection Requests

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments must be received on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Copies of the submissions may be obtained from Molly Skasko by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622–8922, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

**SUPPLEMENTARY INFORMATION:**

**Fiscal Service (FS)**

1. *Title:* Trace Request for Electronic Funds Transfer (EFT) Payment.

*OMB Control Number:* 1530–0002.

*Type of Review:* Extension of a currently approved collection.

*Description:* These forms are used to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The forms are designed to help the financial organization locate any problems and to keep the customer (beneficiary) informed of any action taken.

*Form:* FS Form 150.1 and FS Form 150.2.

*Affected Public:* Businesses or other for-profits.

*Estimated Number of Respondents:* 203,719.

*Estimated Total Number of Annual Responses:* 203,719.

*Estimated Time per Response:* 8 minutes.

*Estimated Total Annual Burden Hours:* 27,162 hours.

2. *Title:* Creditor's Request For Payment of Treasury Securities

Belonging To A Decedent's Estate Being Settled Without Administration.

*OMB Control Number:* 1530–0027.

*Type of Review:* Extension of a currently approved collection.

*Description:* The information is requested to obtain a creditor's consent to dispose of savings bonds/notes in settlement of a deceased owner's estate without administration.

*Form:* FS Form 1050.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 2,200.

*Estimated Total Number of Annual Responses:* 2,200.

*Estimated Time per Response:* 6 minutes.

*Estimated Total Annual Burden Hours:* 220 hours.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–09100 Filed 4–27–22; 8:45 am]

**BILLING CODE 4810–AS–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service Information Collection Requests

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments must be received on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Molly Stasko by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622–8922, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

##### Internal Revenue Service (IRS)

1. *Title:* Application for Determination for Terminating Plan, and Distributable Benefits from Employee Pension Benefit Plans.

*OMB Control Number:* 1545–0202.

*Type of Review:* Extension of a currently approved collection.

*Description:* Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. Form 5310 is used to request an IRS determination letter about the plan's qualification status (qualified or non-qualified) under Internal Revenue Code sections 401(a) or 403(a) of a pension. Form 6088 is used by the IRS to analyst an application for a determination letter on the qualification of the plan upon termination.

*Form Number:* IRS Forms 5310 and 6088.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,244.

*Frequency of Response:* On occasion.  
*Estimated Total Number of Annual Responses:* 1,244.

*Estimated Time per Response:* 66 hours 6 minutes.

*Estimated Total Annual Burden Hours:* 82,231.

2. *Title:* Request for Discharge from Personal Liability Under Internal Revenue Code Section 2204 or 6905.

*OMB Control Number:* 1545–0432.

*Type of Review:* Extension of a currently approved collection.

*Description:* Form 5495 provides guidance under sections 2204 and 6905 for executors of estates and fiduciaries of decedent's trusts. The form, filed after regular filing of an Estate, Gift, or Income tax return for a decedent, is used by the executor or fiduciary to request discharge from personal liability for any deficiency for the tax and periods shown on the form.

*Form Number:* IRS Form 5495.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 25,000.

*Frequency of Response:* On occasion.  
*Estimated Total Number of Annual Responses:* 25,000.

*Estimated Time per Response:* 12 hours 16 minutes.

*Estimated Total Annual Burden Hours:* 306,500 hours.

3. *Title:* Low-Income Housing Credit Disposition Bond.

*OMB Control Number:* 1545–1029.

*Type of Review:* Revision of a currently approved collection.

*Description:* Form 8693 is needed per IRC section 42(j)(6) to post bond or establish a Treasury Direct Account and waive the recapture requirements under section 42(j) for certain disposition of a building on which the low-income housing credit was claimed. Internal Revenue regulations section 301.7101–1 requires that the posting of a bond must be done on the appropriate form as determined by the Internal Revenue Service.

*Form Number:* IRS Form 8693.

*Affected Public:* Businesses or other for-profit; and Individuals or Households.

*Estimated Number of Respondents:* 667.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 667.

*Estimated Time per Response:* 2 hours 36 minutes.

*Estimated Total Annual Burden Hours:* 1,728.

4. *Title:* Clear Reflection of Income in the Case of Hedging Transactions.

*OMB Control Number:* 1545–1412.

*Type of Review:* Extension of a currently approved collection.

*Description:* This regulation provides guidance to taxpayers regarding when gain or loss from common business hedging transactions is recognized for tax purposes and requires that the books and records maintained by a taxpayer disclose the method or methods used to account for different types of hedging transactions.

*Regulation Project Number:* TD 8554.

*Affected Public:* Business or other-for-profit organizations.

*Estimated Number of Respondents:* 100,000.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 100,000.

*Estimated Time per Response:* 12 minutes.

*Estimated Total Annual Burden Hours:* 20,000.

5. *Title:* Reporting Requirements for Widely Held Fixed Investment Trusts.

*OMB Control Number:* 1545–1540.

*Type of Review:* Extension of a currently approved collection.

*Description:* Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

*Regulation Project Number:* TD 9308.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,200.

*Frequency of Response:* Annually.  
*Estimated Total Number of Annual Responses:* 1,200.

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden Hours:* 2,400 hours.

6. *Title:* Credit for Employer-Provided Child Care Facilities and Services.

*OMB Control Number:* 1545–1809.

*Type of Review:* Extension of a currently approved collection.

*Description:* Employers use Form 8882 to claim the credit for qualified childcare facility and resource and referral expenditures. It is part of the general business credit.

*Form Number:* IRS Form 8882.

*Affected Public:* Business or other for-profits; and Individuals or Households.

*Estimated Number of Respondents:* 286.

*Frequency of Response:* Annually.  
*Estimated Total Number of Annual Responses:* 286.

*Estimated Time per Response:* 3 hours 41 minutes.

*Estimated Total Annual Burden Hours:* 1,053.

7. *Title:* Coverdell ESA Contribution Information.

*OMB Control Number:* 1545–1815.

*Type of Review:* Extension of a currently approved collection.

*Description:* Form 5498–ESA is used by trustees or issuers of Coverdell Education Savings accounts to report contributions and rollovers to these accounts to beneficiaries.

*Form Number:* 5498–ESA.

*Affected Public:* Business or other for-profit institutions.

*Estimated Number of Respondents:* 196,600.

*Frequency of Response:* Annually.  
*Estimated Total Number of Annual Responses:* 196,600.

*Estimated Time per Response:* 7 minutes.

*Estimated Total Annual Burden Hours:* 23,592 hours.

8. *Title:* Notice of Expatriation and Waiver of Treaty Benefits.

*OMB Control Number:* 1545–2138.

*Type of Review:* Extension of a currently approved collection.

*Description:* Information used by taxpayers to notify payer of expatriation so that proper tax treatments is applied by payer. The taxpayer is required to file this form to obtain any benefit accorded by the status.

*Form Number:* W–8CE.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 500.

*Frequency of Response:* Annually.  
*Estimated Total Number of Annual Responses:* 500.

*Estimated Time per Response:* 5 hours 41 minutes.

*Estimated Total Annual Burden Hours:* 2,840.

9. *Title:* Section 6708, Failure to Maintain List of Advisees with Respect to Reportable Transactions.

*OMB Control Number:* 1545–2245.

*Type of Review:* Extension of a currently approved collection.

*Description:* This document contains final regulations relating to the penalty under Internal Revenue Code (IRC) section 6708 for failing to make available lists of advisees with respect to reportable transactions. IRC section 6708 imposes a penalty upon material advisors for failing to make available to the Secretary, upon written request, the list required to be maintained by IRC section 6112 within 20 business days after the date of such request. Treasury Regulations section 301.6708–1(c)(3)(ii) requires a material advisor requesting an extension of the 20-business-day period to provide certain information to the IRS to grant the extension. The final regulations primarily affect individuals and entities who are material advisors, as defined in IRC section 6111.

*Regulation Project Number:* TD 9764.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 5.  
*Frequency of Response:* On occasion.  
*Estimated Total Number of Annual Responses:* 5.

*Estimated Time per Response:* 8 hours.

*Estimated Total Annual Burden Hours:* 40.

10. *Title:* Funding relief for multiemployer defined benefit pension plans under the American Rescue Plan Act of 2021.

*OMB Control Number:* 1545–2300.

*Type of Review:* Extension of a currently approved collection.

*Description:* The American Rescue Plan Act of 2021 (ARP), Public Law 117–2, sections 9701, 9702, and 9703 provide elective funding relief for multiemployer defined benefit pension plans to address the continued impact of COVID–19. This notice provides guidance for sponsors of multiemployer defined benefit pension plans on the elections under sections 9701 and 9702 of the ARP Act, and the relief provided under section 9703 of the ARP Act, relating to Internal Revenue Code (IRC) sections 431 and 432.

*Notice Number:* 2021–57.

*Affected Public:* Business or other for-profit organizations; and Not-for-profit organizations.

*Estimated Number of Respondents:* 937.

*Frequency of Response:* On occasion.  
*Estimated Total Number of Annual Responses:* 937.

*Estimated Time per Response:* 58 minutes.

*Estimated Total Annual Burden Hours:* 896.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–09129 Filed 4–27–22; 8:45 am]

**BILLING CODE 4810–01–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Alcohol and Tobacco Tax and Trade Bureau Information Collection Requests

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments must be received on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Molly Stasko by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622–8922, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

### Alcohol and Tobacco Tax and Trade Bureau (TTB)

1. *Title:* Bond for Drawback Under 26 U.S.C. 5111.

*OMB Control Number:* 1513–0116.

*Type of Review:* Extension of a currently approved collection.

*Description:* The IRC authorizes drawback (refund) of all but \$1.00 per

gallon of the Federal excise tax paid on distilled spirits subsequently used in the manufacture of certain nonbeverage products such as medicines, food products, flavors, and perfumes. Manufacturers making such products must file claims proving their eligibility for drawback, and respondents may file such claims either a monthly or a quarterly basis. The IRC also authorizes the Secretary to require persons filing monthly nonbeverage product drawback claims to provide a bond to protect the revenue. See 26 U.S.C. 5111–5114. TTB regulations in parts 17 and 26 require monthly claimants to file a bond on TTB F 5154.3. The required bond ensures repayment of paid claims later found to be ineligible for drawback in cases when the claimant is unable to repay the taxes due.

*Form:* TTB F 5154.3.

*Affected Public:* Businesses or other for-profits; and Individuals or Households.

*Estimated Number of Respondents:* 10.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 10.

*Estimated Time per Response:* 24 minutes.

*Estimated Total Annual Burden Hours:* 4 hours.

2. *Title:* Certificate of Taxpaid Alcohol.

*OMB Control Number:* 1513–0131.

*Type of Review:* Extension of a currently approved collection.

*Description:* The IRC authorizes drawback (refund) of all but \$1.00 per gallon of the Federal excise tax paid on distilled spirits subsequently used in the manufacture of certain nonbeverage products such as medicines, food products, flavors, and perfumes. See 26 U.S.C. 5111–5114. In addition, nonbeverage products produced in the United States and then exported are also eligible for drawback of all excise taxes paid on the distilled spirits used to make those products. See 19 U.S.C. 1313(d). Under the TTB regulations in part 17, a respondent may make an export drawback claim to U.S. Customs and Border Protection (CBP) for the full amount of tax paid if they have previously made no claim to TTB. Alternatively, a respondent may claim the remaining \$1.00 per proof gallon of excise tax paid if they have or will file a claim with TTB under 26 U.S.C. 5114. When a respondent wishes to make a full or partial export drawback claim to CBP, they first submit form TTB F 5100.4, Certificate of Taxpaid Alcohol, to TTB, listing the source and amount of distilled spirits eligible for drawback and the amount of excise taxes claimed.

TTB verifies the provided information and certifies on the form that it has issued no previous certificate for the described distilled spirits. This is necessary to ensure that export drawback is provided consistent with the relevant statutory provisions.

*Form:* TTB F 5100.4.

*Affected Public:* Businesses or other for-profits.

*Estimated Number of Respondents:* 10.

*Frequency of Response:* On occasion.

*Estimated Total Number of Annual Responses:* 10.

*Estimated Time per Response:* 30 minutes.

*Estimated Total Annual Burden Hours:* 5 hours.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Molly Stasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–09103 Filed 4–27–22; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Treasury Departmental Offices Information Collection Requests

**AGENCY:** Departmental Offices, U.S. Department of the Treasury.

**ACTION:** Notice, request for comment.

**SUMMARY:** The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

**DATES:** Comments must be received on or before May 31, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

#### FOR FURTHER INFORMATION CONTACT:

Copies of the submissions may be obtained from Molly Stasko by emailing [PRA@treasury.gov](mailto:PRA@treasury.gov), calling (202) 622–8922, or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

## Departmental Offices (DO)

1. *Title:* Reporting of International Capital and Foreign Currency Transactions and Positions.

*OMB Control Number:* 1505–0149.

*Type of Review:* Extension of a currently approved collection.

*Description:* 31 CFR part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of International Affairs to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations.

*Form Number:* None. The forms prescribed by the Secretary and covered by this regulation, § 128.1(c), are Treasury International Capital (TIC) Forms BC, BL–1, BL–2, BQ–1, BQ–2, BQ–3 (1505–0016), CQ–1, CQ–2 (1505–0024), D (1505–0199), S (1505–0001), SLT (1505–0235) and Treasury Foreign Currency Forms FC–1, FC–2, and FC–3 (1505–0010).

*Affected Public:* Businesses and other for-profits.

*Estimated Number of Respondents:* 2,063.

*Estimated Total Number of Annual Responses:* 20,980.

*Estimated Time per Response:* 20 minutes.

*Estimated Total Annual Burden Hours:* 6,993 hours.

2. *Title:* Prohibition on Funding of Unlawful Internet Gambling.

*OMB Control Number:* 1505–0204.

*Type of Review:* Extension without change of a current OMB approval.

*Description:* The Unlawful Internet Gambling Enforcement Act requires the Treasury and the Federal Reserve Board (the “Agencies”) to prescribe regulations requiring designated payment systems and all participants to identify and block unlawful internet gambling transactions through the establishment of reasonably designated policies and procedures. The Agencies have published a regulation that

requires designated payment systems and all participants to establish and implement written policies and procedures. The share of the burden attributable the Treasury is listed below, while the share attributable to the Federal Reserve Board is accounted for under OMB Control No. 7100–0317.

*Form Number:* None.

*Affected Public:* Businesses or other for-profits; and not-for-profit organizations.

*Estimated Number of Respondents:* 6,038.

*Frequency of Response:* Annually.

*Estimated Total Number of Annual Responses:* 6,038.

*Estimated Time per Response:* 8.05 hours.

*Estimated Total Annual Burden*

*Hours:* 48,604 hours.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Molly Skasko,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2022–09093 Filed 4–27–22; 8:45 am]

**BILLING CODE 4810–AK–P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

### Agency Information Collection Activity: State or Tribal Organization Application for Interment Allowance

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register**

concerning each proposed collection of information, including each proposed revision of a previously approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before June 27, 2022.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov) or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to [nancy.kessinger@va.gov](mailto:nancy.kessinger@va.gov). Please refer to “OMB Control No. 2900–0565” in any correspondence. During the comment period, comments may be viewed online through FDMS.

#### FOR FURTHER INFORMATION CONTACT:

Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email [maribel.aponte@va.gov](mailto:maribel.aponte@va.gov). Please refer to “OMB Control No. 2900–0565” in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4)

ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* 38 U.S.C. 2302 and 2303.

*Title:* State or Tribal Organization Application for Interment Allowance (Under 38 U.S.C. Chapter 23); VA Form 21P–530a.

*OMB Control Number:* 2900–0565.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The Department of Veterans Affairs (VA) through its Veterans Benefits Administration (VBA) administers an integrated program of benefits and services, established by law, for Veterans, service personnel, and their dependents and/or beneficiaries. VA Form 21P–530a is used to gather the information required to determine whether a State or Tribal Organization is eligible for interment allowances for eligible Veterans who have been buried in a State Veterans’ cemetery or Tribal Trust land. Information is requested by this form under the authority of 38 U.S.C. 2302 and 2303.

The respondent burden has decreased due to the estimated number of receivables averaged over the past year.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 2,795 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 33,544.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2022–09108 Filed 4–27–22; 8:45 am]

**BILLING CODE 8320–01–P**



# FEDERAL REGISTER

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## Part II

### Department of Transportation

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#### Federal Transit Administration

Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Infrastructure Investment and Jobs Act; and FTA Fiscal Year 2022 Apportionments, Allocations, Program Information and Interim Guidance; Notice

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration****Notice of FTA Transit Program Changes, Authorized Funding Levels and Implementation of the Infrastructure Investment and Jobs Act; and FTA Fiscal Year 2022 Apportionments, Allocations, Program Information and Interim Guidance**

**AGENCY:** Federal Transit Administration (FTA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice announces changes in Federal Transit Administration (FTA) programs in accordance with amendments to Federal public transportation law by the Bipartisan Infrastructure Law (enacted as the Infrastructure Investment and Jobs Act (IIJA)). The IIJA authorizes surface transportation programs of the Department of Transportation (DOT) for Federal fiscal years (FY) 2022 through 2026 and provides advance appropriations for certain programs. This notice provides preliminary implementation instructions and guidance for the new and revised programs in FY 2022, announces the funding apportionment for programs authorized and funded with FY 2022 contract authority and appropriations, and describes future plans for several competitive programs. The notice also includes locations of FY 2022 apportionment tables and unobligated (or carryover) funds allocated under the discretionary programs from prior years.

**FOR FURTHER INFORMATION CONTACT:** For general information about this notice contact John Bodnar, Director, Office of Transit Programs, at (202) 366-9091. Please contact the appropriate FTA Regional Office for any specific requests for information or technical assistance. FTA Regional Office contact information is available at: <https://www.transit.dot.gov/about/regional-offices/regional-offices>.

An FTA headquarters contact for each major program area is included in the discussion of that program in the text of this notice. FTA recommends that stakeholders subscribe to GovDelivery (<https://public.govdelivery.com/accounts/USDOTFTA/subscribe/new>) to receive email notifications when new information is available.

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**I. Overview**

This document contains important information and interim guidance about new FTA programs and changes to existing FTA program statutes (49 U.S.C. 5301, *et seq.*), as amended by the Bipartisan Infrastructure Law, which was enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), signed by President Biden on November 15, 2021, and effective on October 1, 2021.

In addition, this document provides apportionments for FTA formula and discretionary programs for FY 2022 based on the Consolidated Appropriations Act, 2022 (Pub. L. 117-103, March 15, 2022). It also contains information on how FTA plans to administer its transit programs in FY 2022 and how funds appropriated and allocated prior to FY 2022 will be treated.

This notice highlights important changes to FTA programs, including new competitive programs. It describes definitional changes and cross-cutting requirements and provides specific information about FTA's statutory programs as amended by the IIJA.

For each FTA program, FTA has provided information on the IIJA-authorized funding levels for FY 2022, the basis for apportionment or allocation of funds, requirements specific to the program, period of availability of funds, and other program information. A separate section provides information on pre-award authority and other requirements and guidance applicable to FTA programs and grant administration. Finally, the notice includes references to tables on FTA's website that show amounts apportioned under the FY 2022 appropriations and approximately \$2.3 billion in unobligated or carryover funding available in FY 2022 under certain competitive programs carried out in accordance with prior authorization acts.

Information in this document includes references to the existing FTA program guidance and circulars. Some information may have been superseded by new provisions in the IIJA, but these guidance documents and circulars remain a resource for program management in most areas. FTA intends to revise the guidance and circulars, as appropriate, with an opportunity for public comment when necessary.

## II. FY 2022 Funding for FTA Programs

### A. Federal Transit Law as Amended by the IIJA Authorization and FY 2022 Appropriations

The IIJA is the new five-year surface transportation reauthorization legislation that provides FTA an authorization level of \$21.01 billion in FY 2022 and up to a total of \$108.15 billion from FY 2022 through FY 2026. The IIJA modifies certain transit programs; provides significant funding increases; creates four new competitive grant programs; and changes several cross-cutting requirements. The law continues and expands FTA's authority to strengthen the safety of public transportation systems throughout the United States.

Of the \$108.15 billion, the IIJA provides for \$69.9 billion to be provided from the Mass Transit Account, provides \$21.25 billion in advance appropriations, and authorizes an additional \$17 billion to be appropriated from the General Fund of the Treasury.

The Consolidated Appropriations Act, 2022, appropriated \$16,264,763,267 for FY 2022, providing the authorized \$13.355 billion for the Mass Transit Account; appropriated \$504,263,267 in Transit Infrastructure Grants, including an additional \$175 million for the Buses and Bus Facilities Competitive grant program, an additional \$75 million for the Low or No Emission Grants program, an additional \$6.5 million for the Urbanized Area Passenger Ferry program; an additional \$2 million for the Bus Testing program, an additional \$12 million for several research programs, \$20 million for competitive grants to assist areas of persistent poverty, \$200,798,267 for Community Project Funding/Congressionally Directed Spending and an additional \$12.965 million to the ferry service for rural communities program; appropriated \$7.5 million in additional technical assistance and training funding; appropriated \$2.248 billion for the Capital Investment Grant program and the Expedited Project Delivery Pilot Program, and appropriated \$150,000,000 for the Washington Metropolitan Area Transit Authority. Combined with the \$4.25 billion in advance appropriations for FY 2022, a total of \$20,514,763,267 was appropriated for FY 2022. Funding availability for each program is identified in section IV of this notice and Table 1 located on FTA's FY 2022 Apportionment web page.

### B. Oversight Takedown

The IIJA did not modify the percentage takedown for oversight provided in section 5338(c).<sup>1</sup> The following oversight takedowns of FTA programs will be applied: 0.5 percent of Metropolitan and Statewide Planning funds, 0.75 percent of Urbanized Area Formula funds, 1 percent of Fixed Guideway Capital Investment Grants funds, 0.5 percent of Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities, 0.5 percent of Formula Grants for Rural Areas, 1 percent of State of Good Repair Formula funds, 0.75 percent for Grants for Buses and Bus Facilities, and 1 percent of Capital and Preventive Maintenance Projects for Washington Metropolitan Area Transit Authority funds. The funds are used to provide necessary oversight activities, such as oversight of the construction of any major capital project receiving Federal transit assistance; to conduct State Safety Oversight, drug and alcohol, civil rights, procurement systems, management, planning certification, and financial reviews and audits, as well as evaluations and analyses of recipient-specific problems and issues; to generally provide technical assistance and correct deficiencies identified in compliance reviews and audits; and to support FTA's administrative expenses.

Additionally, the IIJA provides for a 2 percent takedown from each of the advance appropriations provided under Division J, Title VIII of IIJA, except for the Capital Investment Grant takedown, which remains at 1 percent. One-half percent of that two percent is to be provided to the U.S. DOT Office of the Inspector General (OIG).

### C. Formula Apportionment Data and Methodology

#### 1. Apportionment Tables

FTA has published apportionment tables on its website for each program that reflect the full-year appropriations less oversight take-downs, as applicable. Tables displaying the funds available to eligible states, tribes, and urbanized areas have been posted to <http://www.transit.dot.gov/funding/apportionments>. This website contains a page listing the apportionment and allocation tables for FY 2022, as well as links to prior year formula apportionment notices and tables and the National Transit Database and Census data used to calculate the FY 2022 apportionments.

<sup>1</sup> All references to "section" herein refer to sections of Chapter 53 of Title 49 of the United States Code, unless otherwise specifically stated.

#### 2. National Transit Database and Census Data Used in the FY 2022 Apportionments

Consistent with past practices, the calculations for sections 5307, 5311, including 5311(j) (Tribal Transit), 5329, 5337, and 5339 programs rely on the most-recent transit service data reported to the National Transit Database (NTD), which in this case is the 2020 report year. Due to the ongoing impacts of the COVID-19 pandemic, FTA allowed all transit agencies to substitute their 2019 NTD data in place of their 2020 data in all cases where that transit agency provided more vehicle revenue miles of service in 2019 than in 2020. In some cases where an apportionment is based on the age of the system, the age is calculated as of September 30, 2021, which was the last day before FY 2022 began. Any recipient or beneficiary of either the section 5307 or section 5311 program funds is required to report to the NTD. All other FTA grant recipients that own, operate, or manage transit capital assets must report their asset data to the NTD. Additionally, a number of transit operators report to the NTD on a voluntary basis. For the 2020 report year, the NTD includes data from 949 reporters in urbanized areas, 929 of which reported operating transit service. The NTD also includes data from 1,326 providers of rural transit service, which includes 133 Indian Tribes providing transit service. The IIJA made a number of changes to NTD reporting requirements. Before implementing these changes, FTA will provide notice and seek comment on implementation in a separate notice in the **Federal Register**.

The 2010 Census data is used to determine population and population density for sections 5303, 5305, 5307 and 5339 as well as rural population and rural land area for Section 5311.<sup>2</sup> The formulas for sections 5307, 5311, and 5311(j) include tiers where funding is allocated on the basis of the number of persons living in poverty, and the Section 5310 formula program allocates funding on the basis of the population of older adults and people with disabilities. The Census Bureau no longer publishes decennial census data on persons living in poverty and persons with disabilities. As a result, since FY 2013, FTA has been using the data for these populations available via the Census' American Community Survey (ACS). The NTD and census data that FTA used to calculate the apportionments associated with this

<sup>2</sup> It should be noted that the 2020 Census data is not yet available. Once published the data will be applied to the FY 2023 allocations.

notice can be found on FTA's website: Formula Apportionments Data.

The FY 2022 apportionments use data on low-income persons, persons with disabilities, and older adults from the 2015–2019 ACS five-year data set, which was published in December 2020. This data represents the most recent five-year ACS estimates that are available as of October 1st for the year being apportioned. As was the case in prior years, data on low-income persons comes from ACS Table B17024, "Age by Ratio of Income to Poverty in the Last Twelve Months," and data on people with disabilities under 65 years old comes from ACS Table S1810, "Disability Characteristics." For the FY 2022 apportionments, FTA is using data on older adults (over 65 years old) from ACS Table B01001, "Sex by Age" after determining that the ACS table used in prior fiscal years (ACS Table S.0103, "People over 65 in the United States") did not include data for all urbanized areas.

#### *D. Previously Authorized Funding*

For programs that are continued under the IIJA with amendments, the provisions of the IIJA now apply to all unobligated funds from FY 2021 and prior years, as well as to FY 2022 funds.

### **III. The IIJA and FY 2022**

#### **Appropriations: Highlights of Changes**

The IIJA generally continued FTA's existing programs with substantial increases in funding. However, it did modify certain FTA's formula and competitive programs, created four new competitive grant programs, and modified FTA's cross-cutting and regulatory requirements in several areas.

#### *A. Grant Program Modifications*

##### **1. Modifications to Formula Programs**

In addition to increased funding levels, the IIJA modified several of the formula programs. Modifications to the amounts for particular programs or subprograms are described in Section IV.

##### **a. Urbanized Area Formula Program**

The IIJA requires each recipient that serves urbanized areas with populations of 200,000 or more to allocate not less than 0.75 percent of their Urbanized Area Formula Program funds to safety-related projects. Examples of activities that may satisfy this requirement are wide-ranging, and may include projects such as improving air filtration systems or lighting on transit property, or procurements that improve safety by replacing older vehicles in a poor state of good repair with newer vehicles in a good state of repair with modern safety

features. Recipients in large urbanized areas that may use section 5307 funding for operating expenses by qualifying under the "100-bus rule" may identify operating expenses that satisfy the safety requirement. Note that this is separate from the requirement for urbanized areas to use 1 percent of the funds apportioned under section 5336 for security under the Urbanized Area Formula Program. However, some safety expenditures identified to satisfy the safety requirement may also be used to support the 1% requirement for security-related projects for the UZA if the recipient can justify the expense as both a safety and a security expense.

##### **b. Grants for Buses and Bus Facilities Formula Program**

The IIJA modifies the Grants for Buses and Bus Facilities Formula and Competitive programs to include a requirement for applicants to use, to the extent possible, innovative procurement tools authorized under Section 3019 of the FAST Act (Pub. L. 114–94). If fewer than five buses are purchased through a stand-alone procurement, the recipient must provide a written explanation to FTA of why the authorized procurement tools were not used. (See Section IV.O.)

##### **2. Competitive Programs**

The IIJA continues six competitive programs and creates four new programs. FTA is in the process of developing program guidance for all discretionary programs, which will be published in Notices of Funding Opportunity (NOFO) for each program. These include:

##### **a. Transit-Oriented Development Planning Pilot Program (Section 20005(b) of MAP–21)**

This competitive pilot program for transit-oriented development (TOD) planning grants continues and is authorized for \$68.9 million over five years, with \$13.1 million authorized for FY 2022. Eligible activities include site-specific as well as comprehensive planning associated with new fixed guideway and core capacity improvement projects. The comprehensive plans should enhance economic development, ridership, and other goals established during the project development and engineering processes; facilitate multimodal connectivity and accessibility; increase access to transit hubs for pedestrian and bicycle traffic; enable mixed-use development; identify infrastructure needs associated with the project; and include private sector participation. Also, provisions under the IIJA now permit federal financing for site-specific

as well as comprehensive planning. Previously only comprehensive planning was eligible for federal funds. A NOFO will be published announcing the amount of funding available, application procedures, project and applicant eligibility, and relevant selection criteria.

*For more information or questions on this program, please contact April McLean-McCoy at 202–366–7429 or april.mcleanmccoy@dot.gov.*

##### **b. Passenger Ferry Grant Program (49 U.S.C. 5307(h))**

The competitive Passenger Ferry Grant Program continues without changes. Of the amount authorized for Section 5307 each year, \$30 million is set aside for the competitive discretionary Passenger Ferry Grant Program. Eligible projects are capital projects in urbanized areas including ferries, terminals, and related infrastructure. A NOFO will be published announcing the amount of funding available, application procedures, project and applicant eligibility, and relevant selection criteria.

*For more information about this program, please contact Vanessa Williams at 202–366–4818 or Vanessa.Williams@dot.gov.*

##### **c. Electric or Low-Emitting Ferry Pilot Program (NEW)**

The IIJA authorizes a new pilot program to provide grants for the purchase of electric or low-emitting ferries and the electrification of or other reduction of emissions from existing ferries. A total of \$50 million for each fiscal year through 2026 is authorized to be appropriated to carry out this program. An additional \$50 million in advance appropriations is provided each fiscal year, for a total of up to \$100 million annually.

The term "electric or low-emitting ferry" means a ferry that reduces emissions by utilizing alternative fuels or onboard energy storage systems and related charging infrastructure to reduce emissions or produce zero onboard emissions under normal operation.

A NOFO will be published announcing the amount of funding available, application procedures, project and applicant eligibility, and relevant selection criteria.

*For more information about this program, please contact Vanessa Williams at 202–366–4818 or Vanessa.Williams@dot.gov.*

d. Ferry Service for Rural Communities (NEW)

The IIJA authorizes a new competitive program to provide funds to States for basic essential ferry service. A total of \$200 million per year is authorized to be appropriated over five years with an additional \$200 million in advance appropriations provided for each of fiscal years 2022 through 2026 to carry out this program. In FY 2022, an additional \$12.965 million was appropriated, for a total of \$212,965,000 to be made available.

A NOFO will be published announcing the amount of funding available, application procedures, project and applicant eligibility, and relevant selection criteria.

*For more information about this program, please contact Sarah Clements at 202-366-3062 or sarah.clements@dot.gov.*

e. Innovative Coordinated Access and Mobility Pilot Program (FAST Act Section 3006(b))

The competitive pilot program for innovative coordinated access and mobility continues without changes. A total of \$24.1 million is authorized for this program over five years, with \$4.6 million authorized in FY 2022. Eligible applicants include state departments of transportation, designated recipients of formula grants for the Enhanced Mobility of Seniors and Individuals with Disabilities (Section 5310) program, local governmental entities that operate a public transportation service, or their eligible subrecipients. The program is designed to assist in financing innovative projects that improve the coordination of transportation services and non-emergency medical transportation (NEMT) services for people who are transportation disadvantaged. A NOFO was published on October 7, 2021, that announced funding, application procedures, project and applicant eligibility, and relevant selection criteria (86 FR 55907). A report is published each year on the pilot program. The most recent report is available at Section 3006(b) Pilot Program for Innovative Coordinated Access and Mobility Fiscal Year 2021.

*For more information about this program, please contact Destiny Buchanan at 202-493-8018 or destiny.buchanan@dot.gov.*

f. Rail Vehicle Replacement Program (NEW)

The IIJA authorizes a new competitive program funded under the State of Good Repair formula program at \$1.5 billion

over five years, with \$300 million annually to assist State and local governmental authorities in financing capital projects for the replacement of rail rolling stock. The IIJA requires that not more than 3 new awards shall be issued to eligible projects under this program on a competitive basis each fiscal year.

In awarding grants under this program consideration shall be given to—

(A) the size of the rail system of the applicant,

(B) the amount of funds available to the applicant under this subsection,

(C) the age and condition of the rail rolling stock of the applicant that has exceeded or will exceed the useful service life of the rail rolling stock in the 5-year period following the grant; and

(D) whether the applicant has identified replacement of the rail vehicles as a priority in the investment prioritization portion of the transit asset management plan of the recipient pursuant to 49 CFR part 625 (or successor regulations).

The amount of grant assistance provided under subsection 5337(f), as a share of eligible project costs, shall be not more than 50 percent. The total Federal share of the cost of an eligible project carried out under this program shall not exceed 80 percent; eligible recipients may supplement the section 5337(f) share with other Federal funds, including FTA formula funds. Eligible projects selected for funding may be carried out through a multi-year grant agreement of up to 3 consecutive fiscal years.

A NOFO will be published announcing the amount of funding available, application procedures, project and applicant eligibility, and relevant selection criteria.

*For more information about this program, please contact Mark Bathrick, 202-366-9955 or mark.bathrick@dot.gov.*

g. Public Transportation on Indian Reservations Competitive Program (49 U.S.C. 5311(c)(1)(A))

The Public Transportation on Indian Reservations competitive program continues with \$45.8 million authorized over 5 years with \$8.75 million authorized for FY 2022. The program is otherwise unchanged. FTA published a NOFO announcing FY 2022 Tribal Transit competitive funding on February 16, 2022 (87 FR 8923).

*For more information about this program, please contact Elan Flippin, 202-366-3800 or elan.flippin@dot.gov.*

h. Grants for Buses and Bus Facilities Competitive Program (49 U.S.C. 5339(b))

The competitive buses and bus facilities program is continued with several modifications. A total of \$1.9 billion over five years is authorized to carry out the 5339(b) Grants for Buses and Bus Facilities Competitive Program, with \$372 million authorized in FY 2022. An additional \$175 million was appropriated in FY 2022, for a total of \$547 million. Eligible capital projects include projects to replace, rehabilitate, lease, and purchase buses and related equipment and projects to purchase, rehabilitate, construct or lease bus-related facilities. Modifications include a requirement for applicants to use, to the extent possible, innovative procurement tools authorized under Section 3019 of the FAST Act. If fewer than five buses are purchased through a stand-alone procurement, the recipient must provide a written explanation to FTA of why the authorized procurement tools were not used. (See Section C.3). Applicants of zero-emission buses must also submit a fleet transition plan and 5 percent of the requested funds in their application must be for workforce development activities, unless the applicant certifies that less is needed to carry out their zero-emission fleet transition plan. The law permits an applicant to the Grants for Buses and Bus Facilities Competitive Program competitive program that is also applying for the Low or No Emission Grant program to propose partnerships with other entities, which would then be deemed to satisfy the competitive procurement requirements under 49 U.S.C. 5325. The law now requires FTA to issue the NOFO within 30 days of a full-year appropriation and announce selections within 75 days of the application due date and increases the minimum for rural awards from 10 to 15 percent of the total, unless there are insufficient applications. FTA published the NOFO for the program on March 4, 2022 (87 FR 12528).

*For more information about the Grants for Buses and Bus Facilities Competitive Program, contact Amy Volz, Office of Transit Programs at (202) 366-7484 or Amy.Volz@dot.gov.*

i. Low or No Emission Program (49 U.S.C. 5339(c))

The Low or No Emissions Program (Low-No Program) is continued with several modifications. The IIJA authorizes \$374,550,890 and provides an additional \$5.25 billion in advance appropriations for a total of \$5.6 billion over five years, with \$1.1 billion authorized for FY 2022. An additional

\$75 million was appropriated in FY 2022 for a total of \$1.175 billion. Eligible projects or programs of projects include the acquisition and leasing of low or no emission vehicles, constructing and leasing facilities, and rehabilitating or improving existing facilities to accommodate low or no emission vehicles. Modifications include a clarification that requirements of section 5311 apply to rural recipients. The law requires applicants for zero-emission buses to submit a fleet transition plan, and 5 percent of the funds requested in the application must be for workforce development activities, unless the applicant certifies that less is needed to carry out its zero-emission fleet transition plan. A recipient of a grant under this subsection may submit an application in partnership with other entities, including a transit vehicle manufacturer, that intends to participate in the implementation of an eligible project under this subsection. Eligible projects awarded with partnerships under this subsection shall be considered to satisfy the requirement for a competitive procurement under section 5325. Not less than 25 percent of Low or No Emissions Grants total funding must be used for low-emission vehicles and related facilities (such as compressed natural gas or hybrid vehicles). FTA published the NOFO for the program on March 4, 2022 (87 FR 12528).

*For more information about the Low or No Emission Program, contact Amy Volz, Office of Transit Programs at (202) 366-7484 or Amy.Volz@dot.gov.*

j. All Station Accessibility Program (NEW)

The advance appropriations of the IJA provides \$1.75 billion (\$350 million per year) for a new competitive All Stations Accessibility Program (ASAP) to provide states and local government authorities funding for capital projects to upgrade the accessibility of legacy rail fixed guideway public transportation systems for people with disabilities, including those who use wheelchairs, by increasing the number of existing stations or facilities for passenger use that meet or exceed the construction standards of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131 *et seq.*). Eligible entities are encouraged to consult with appropriate stakeholders, including current and potential transit customers with disabilities and disability advocacy groups, and the surrounding community to ensure the projects provide accessibility for individuals with disabilities, including accessibility for individuals with physical disabilities,

including those who use wheelchairs; accessibility for individuals with sensory disabilities; and accessibility for individuals with intellectual or developmental disabilities.

An eligible entity may not use a grant awarded under this program to upgrade a station or facility for passenger use that is accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, consistent with current (as of the date of the upgrade) construction standards under Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131, *et seq.*).

A grant for a project made with amounts made available under this program shall be for 80 percent of the net project cost. All projects shall at least meet the construction standards of Title II of the Americans with Disabilities Act of 1990 as implemented by the U.S. DOT ADA regulations at 49 CFR parts 37 and 38.

FTA will publish a NOFO announcing the amount of FY 2022 funding available, application procedures, project and applicant eligibility, and relevant selection criteria.

*For more information about this program, please contact Kevin Osborn at 202-366-7519 or Kevin.Osborn@dot.gov.*

k. Public Transportation Emergency Relief Program (49 U.S.C. 5324).

The IJA modified the Emergency Relief Program to require an applicant, before receiving a grant, to (1) submit to FTA documentation demonstrating proof of insurance required under Federal law for all structures related to the grant application; and (2) certify to FTA that the applicant has insurance required under State law for all structures related to the grant application.

*For more information or questions on this program, please contact Tom Wilson at (202) 366-5279 or Thomas.Wilson@dot.gov.*

l. Capital Investment Grants Program

The IJA continues, with modifications, the discretionary Fixed Guideway Capital Investment Grants (CIG) program, which funds fixed guideway investments including new and expanded rapid rail, commuter rail, light rail, streetcars, bus rapid transit, and ferries, as well as corridor-based bus rapid transit investments that emulate the features of rail. There are three categories of eligible projects under the CIG program: New Starts, Small Starts, and Core Capacity. Each type of CIG project has a unique set of requirements in the law, although many

similarities exist among them. To be eligible to receive a CIG construction grant, all proposed projects must go through a multi-year, multi-step development process outlined in the law. FTA is required to evaluate and rate CIG projects on statutorily defined project justification and local financial commitment criteria that differ by project type, and a project must receive at least a "Medium" overall rating to advance through the steps in the process and receive a construction grant award. The IJA authorizes \$3 billion per year in annual appropriations for the CIG Program, including funding that may be awarded under the Expedited Project Delivery Pilot Program. In addition, the law directly provides \$1.6 billion per year in advance appropriations as a supplement to annual appropriations for this program.

Additionally, the IJA makes several revisions:

- Revises the Small Starts and New Starts eligibility thresholds. Small Starts are now projects with a total estimated project cost of less than \$400,000,000 and that are seeking CIG funding of less than \$150,000,000. New Starts are projects with a total estimated project cost of \$400,000,000 or more or that are seeking CIG funding of \$150,000,000 or more.
- Revises Core Capacity project eligibility to corridors that are at capacity today or will be in 10 years, rather than the 5-year timeframe under the FAST Act.
- Establishes a process for immediate and future bundling of CIG projects to allow sponsors to move multiple projects through the CIG pipeline simultaneously. The new bundling eligibilities replace the prior "Program of Interrelated Projects" eligibility.
- Adds a requirement for the Secretary to determine that a project sponsor has made progress toward meeting the transit asset management performance targets required by 49 U.S.C. 5326(c)(2).
- Amends the "warrants" provisions for New Starts and Core Capacity projects to remove the requirement that the total estimated capital cost of the project must be under \$100,000,000.
- Requires the Secretary to provide full and fair consideration to projects that seek an updated rating after a period of inactivity following an earlier rating and evaluation.
- Adds a requirement that FTA publish, at least monthly, a dashboard on its public website with information on each project seeking CIG funding.
- Revises Before and After Study requirements (an analysis of predicted versus actual cost and ridership

outcomes after a CIG project opens for service). The requirement that FTA report on those studies to Congress annually was also eliminated. Instead, the GAO, as part of its biennial review of the CIG program, will report to Congress on the differences between the predicted and actual outcomes for CIG projects.

- Revises the congressional notification timeframe required before a CIG construction grant can be awarded from 30 days to 15 days for New Starts and Core Capacity projects.

On March 15, 2022 FTA published in the **Federal Register** a Notice of availability of initial guidance proposals for the Capital Investment Grants program (87 FR 14612).

#### m. Grants To Assist Areas of Persistent Poverty

This competitive pilot program for the Areas of Persistent Poverty Program (AoPP) has been appropriated in FY 2020 (\$8,500,000), 2021 (\$16,220,000) and 2022 (\$20,000,000). As required by law, funds will be awarded competitively for planning, engineering, or development of technical or financing plans for projects that assist areas of persistent poverty. To be considered eligible, proposed projects must be in a county with 20 percent or more of the population living in poverty over the 30 years preceding the date of enactment of the appropriation act, as measured by the 1990 and 2000 decennial census and the most recent Small Area Income and Poverty Estimates, or from any census tract with a poverty rate of at least 20 percent as measured by the 2013–2017, 5-year data series available from the American Community Survey of the Census Bureau. The FTA has posted a table and maps of the Areas of Persistent Poverty that meet these criteria at [www.transit.dot.gov](http://www.transit.dot.gov). A NOFO will be published announcing the amount of funding available, application procedures, project and applicant eligibility, and relevant selection criteria.

*For more information or questions on this program, please contact Tonya Holland at 202–493–0283 or [tonya.holland@dot.gov](mailto:tonya.holland@dot.gov).*

#### B. Washington Metropolitan Area Transit Authority Funding

The IIJA reauthorizes the Passenger Rail Investment and Improvement Act of 2008 (PRIIA) (Pub. L. 110–432) to provide supplemental funding for the Washington Metropolitan Area Transit Authority (WMATA) through fiscal year 2030 at \$150,000,000 annually. Each year, WMATA must set aside

\$5,000,000 for the exclusive use of the WMATA Inspector General. A GAO audit is required within three years to assess the independence of the Inspector General and the extent to which additional required reforms have been implemented and are successful.

#### C. Definitional Changes and New Definitions

Section 30001 of the IIJA amended section 5302 to provide one new definition and to amend existing definitions that clarify eligibility and requirements within FTA's programs. Unless otherwise stated, these definitions apply across all FTA programs, and are effective with all funds obligated on or after October 1, 2021, even if the funds were appropriated in earlier fiscal years. Several important definitional changes include:

##### 1. Assault on a Transit Worker

The term “assault on a transit worker” means a circumstance in which an individual knowingly, without lawful authority or permission, and with intent to endanger the safety of any individual, or with a reckless disregard for the safety of human life, interferes with, disables, or incapacitates a transit worker while the transit worker is performing the duties of the transit worker.

##### 2. Capital Project

The provision of technology to fuel a zero-emission vehicle is now an eligible expense as a part of a joint development project. Guidance will be forthcoming on this issue.

#### D. Cross-Cutting Programmatic Requirements and Changes

The following cross-cutting requirements apply to all FTA programs as of October 1, 2021, unless otherwise noted.

##### 1. Metropolitan and Statewide Planning

The planning programs provide funding and procedural requirements to metropolitan areas and States for multimodal transportation planning that is cooperative, continuous, and comprehensive, resulting in long-range plans and short-range programs of projects that reflect transportation investment priorities. The planning programs are jointly administered by FTA and the Federal Highway Administration (FHWA), which provides additional funding. There are five changes noted below. The amendments to sections 5303, 5304, 5305 include:

- Adds consideration of state and local housing patterns in the metropolitan planning process and requires MPOs to provide affordable housing organizations an opportunity to comment on the transportation plan.

- Requires MPOs to ensure the consistency of data used in the planning process, including information used in forecasting travel demand, if more than one MPO is designated within an urbanized area.

- Permits the use of social media and other web-based tools to encourage public participation in the planning process.

- Requires MPOs to consider the equitable and proportional representation of the population of the metropolitan planning area when designating officials for the first time.

- Permits a greater than 80 percent federal share for transportation planning in certain circumstances and requires a federal share of not less than 90 percent for activities that assist lower-density or lower-income portions of urbanized or adjoining rural areas.

In addition to changes in sections 5303 and 5304, FTA notes the Metropolitan and Statewide planning processes continue to emphasize a performance-based planning process: MPOs and State DOTs must establish performance targets that address forthcoming U.S. DOT-issued national performance measures that are based on the goals outlined in the legislation—safety, infrastructure condition, congestion reduction, system reliability, economic vitality, environmental sustainability, reduced project delivery delays, transit safety, and transit asset management. MPOs also must coordinate their performance targets, to the maximum extent practicable, with performance targets set by FTA recipients under the new performance measure requirements for safety and state of good repair. Transportation Improvement Programs (TIPs) must include a description of the anticipated progress toward achieving the performance targets identified in the metropolitan transportation plan, linking investment priorities to those performance targets.

##### 2. Innovative Bus Procurement

The IIJA amends the Grants for Buses and Bus Facilities formula and competitive programs and requires applicants to use, to the extent possible, innovative procurement tools authorized under Section 3019 of the FAST Act. If fewer than five buses are purchased through a stand-alone procurement, the recipient must provide a written explanation to FTA of why the

authorized procurement tools were not used. Innovative procurements authorized under Section 3019 of the FAST Act include: (1) State cooperative procurement schedules in which a state government enters into a cooperative procurement contract with one or more vendors in which the vendors agree to provide an option to purchase rolling stock and related equipment to the State government and any other participant; and the State government acts throughout the term of the contract as the lead procurement agency; (2) participation in the FTA pilot program for nonprofit cooperative procurements (Interest applicants may forward a Letter of Interest to: [JamesHarper@dot.gov](mailto:JamesHarper@dot.gov)); (3) procurements resulting from the joint procurement clearinghouse found in TrAMS; or (4) a capital lease. Note that Section 3019 requires all recipients of capital leases (rolling stock and related equipment) to submit to FTA, no later than three years after the date on which the lease was entered, a report evaluating the overall costs and benefits of leasing rolling stock and comparing the expected short-term and long-term maintenance costs of leasing versus buying rolling stock.

As procurement decisions may be made before or after grant award, the written explanation, if applicable, should be provided with the TrAMS grant application or if the procurement decision is made after grant award, to the appropriate FTA Regional Office. It is not required for an application in response to a NOFO for a project not yet selected. The written explanation may be provided in the form of a letter explaining why the provisions of Section 3019 were not utilized for the procurement.

### 3. Disposition of Rolling Stock, Equipment, and Supplies

The IIJA added a provision changing disposition requirements for rolling stock and equipment with a fair market value of more than \$5,000 per unit and unused supplies with a total aggregate fair market value of more than \$5,000 that were purchased using Federal financial assistance under Chapter 53. If the rolling stock, equipment, or supplies are sold at the end of their service life, the recipient shall now retain an amount equal to: (1) The sum of \$5,000, and (2) of the remaining proceeds, a percentage of the amount equal to the non-Federal share expended by the recipient in making the original purchase. After the recipient calculates and retains this amount, any remaining amounts must be returned to FTA. For example, if a bus is sold at the fair market value of \$12,000 and funded

with an 80 percent federal share, the recipient retains \$5,000 plus 20 percent of the remaining \$7,000, or \$1,400, for a total of \$6,400; they must return 80 percent of \$7,000 (or \$5,600) to FTA.

This provision is applicable to sales that occurred after the date of enactment of the IIJA on November 15, 2021. FTA posted frequently asked questions at: <https://www.transit.dot.gov/funding/grants/bipartisan-infrastructure-law-disposition-requirements-frequently-asked-questions>.

### 4. Transfer of Property to Non-Governmental Entities

Section 6609 of the FY 2022 National Defense Authorization Act (NDAA) (Pub. L. 117–81) amended 49 U.S.C. 5334(h)(1), adding a disposition option for assets acquired with federal assistance but no longer needed for the originally authorized purpose. Under the new provision, the Secretary may authorize the transfer of the asset to a local governmental authority, non-profit organization, or other third-party entity if, among other factors, it will be used for transit-oriented development and includes affordable housing. When FTA concurs that the following five criteria are met, the asset may be transferred with no further obligation to the Government:

- The asset is a necessary component of a proposed transit-oriented development project;
- The transit-oriented development project will increase transit ridership;
- At least 40 percent of the housing units offered in the transit-oriented development, including housing units owned by nongovernmental entities, are legally binding affordability restricted to tenants with incomes at or below 60 percent of the area median income and owners with incomes at or below 60 percent of the area median income, which shall include at least 20 percent of such housing units offered restricted to tenants with incomes at or below 30 percent of the area median income;
- The asset will remain in use for at least 30 years after the date the asset is transferred; and
- With respect to a transfer to a third-party entity, a local government authority or nonprofit organization is unable to receive the property; the overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and the third party has demonstrated a satisfactory history of construction or

operating an affordable housing development.

As part of the process to update FTA program circulars to reflect the new authorizing legislation, additional guidance and information regarding implementation of this and other provisions, maybe published for notice and comment, as determined necessary.

### 5. Fleet Transition Plan

The IIJA amended the statutory provisions for the Grants for Buses and Bus Facilities Competitive Program and the Low or No Emission Program to include the requirement that any application for projects related to zero-emission vehicles include a Zero-Emission Transition Plan.

A Zero-Emission Transition Plan must, at a minimum:

- Demonstrate a long-term fleet management plan with a strategy for how the applicant intends to use the current request for resources and future acquisitions.
- Address the availability of current and future resources to meet costs for the transition and implementation.
- Consider policy and legislation impacting relevant technologies.
- Include an evaluation of existing and future facilities and their relationship to the technology transition.
- Describe the partnership of the applicant with the utility or alternative fuel provider.
- Examine the impact of the transition on the applicant's current workforce by identifying skill gaps, training needs, and retraining needs of the existing workers of the applicant to operate and maintain zero-emission vehicles and related infrastructure and avoid displacement of the existing workforce.

### 6. National Transit Database (NTD)

The IIJA adds new requirements for the NTD to collect data on geographic service area coverage from recipients of the Urbanized Area Formula and Rural Area Formula programs. There is also a new requirement for the NTD to collect data on fatalities that result from impact with a bus and on transit worker assaults from all recipients of FTA funding. FTA will provide notice of its plans to implement these requirements, and may request comment on that proposal as necessary, in a separate **Federal Register** notice.

## IV. Program-Specific Information

### A. Metropolitan Planning Program (49 U.S.C. 5303 and 5305(d))

Section 5305(d) makes available Federal funding to support a

cooperative, continuous, and comprehensive planning program for transportation investment decision-making at the metropolitan area level. The specific requirements of metropolitan transportation planning are set forth in 49 U.S.C. 5303 and in 23 CFR part 450, as incorporated by reference in 49 CFR part 613, Statewide and Non-metropolitan Transportation Planning. State Departments of Transportation (DOTs) are direct recipients of funds allocated by FTA, and the funds are then sub-allocated to Metropolitan Planning Organizations (MPOs) for planning activities that support the economic vitality of the metropolitan area.

The metropolitan transportation planning process must establish a performance-based approach in which the MPO will develop specific performance targets that address transportation system performance measures (issued by U.S. DOT), where applicable, to use in tracking progress towards attaining critical outcomes. These performance targets will be established by MPOs in coordination with States and transit providers. MPOs

will provide a system performance report that evaluates the progress of the MPO in meeting the performance targets in comparison with the system performance identified in prior reports.

This funding must support work elements and activities resulting in comprehensive intermodal transportation planning for the movement of people and goods in the metropolitan area. Comprehensive transportation planning is not limited to transit planning or surface transportation planning but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance. Eligible work elements or activities include, but are not limited to, studies relating to management, mobility management, planning, operations, capital requirements, economic feasibility, performance-based planning, safety, and transit asset management; evaluation of previously funded projects; peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analysis among

MPOs and other transportation planners; planning for multimodal transportation access to transit facilities including pedestrian and bicycle access, and transit supportive land use plans; systems planning, scenario planning, and corridor-level alternative analysis; safety, security, and emergency transportation and evacuation planning; air quality planning; and development of coordinated public transit human services transportation plans. An exhaustive list of eligible work activities is provided in FTA Circular 8100.1D, *Program Guidance for Metropolitan Planning and State Planning and Research Program Grants*, dated September 10, 2018.

For more about the Metropolitan Planning Program, contact Victor Austin, Office of Planning and Environment at (202) 366-2996 or [victor.austin@dot.gov](mailto:victor.austin@dot.gov).

#### 1. Authorized Amounts

The IIJA authorizes \$799.4 million over five years to provide financial assistance for metropolitan planning needs under section 5305 as follows:

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized .....	\$152,740,2811	\$155,931,187	\$160,002,736	\$163,308,011	\$167,459,619

The table above shows the funding amounts authorized for the Metropolitan Planning Program.

#### 2. FY 2022 Funding Availability

A total of \$152,740,2811 is authorized and appropriated for the period October 1, 2021, through September 30, 2022, to the Metropolitan Planning Program (section 5305(d)) to support metropolitan transportation planning activities set forth in section 5303. The total amount apportioned for the Metropolitan Planning Program to States for use by MPOs in urbanized areas (UZAs) is \$152,178,080, as shown in the table below, after the deduction for oversight and the addition of reapportioned funds.

#### METROPOLITAN PLANNING PROGRAM— FY 2022

Total Appropriation .....	\$152,740,2811
Oversight Deductions .....	(763,701)
Reapportioned Funds .....	201,500
Total Apportioned .....	152,178,080

#### 3. Basis for Formula Apportionment

The IIJA did not change the funding formula. Of the amounts authorized in section 5305, 82.72 percent is made

available to the Metropolitan Planning program. Eighty percent of the funds are apportioned on a statutory basis to the States based on the most recent decennial Census for each State's UZA population. The remaining 20 percent is provided to the States based on an FTA administrative formula to address planning needs in larger, more complex UZAs. The amount published for each State includes the supplemental allocation.

#### 4. Requirements

The State allocates Metropolitan Planning funds to MPOs in UZAs or portions thereof to provide funds for planning projects included in a one- or two-year program of planning work activities (the Unified Planning Work Program, or UPWP) that includes multimodal systems planning activities spanning both highway and transit planning topics. Each State has either reaffirmed or developed, in consultation with their MPOs, an allocation formula among MPOs within the State, based on the 2010 Census. The allocation formula among MPOs in each State may be changed annually, but any change requires approval by the FTA Regional Office before grant approval. Program guidance for the Metropolitan Planning

Program is found in FTA Circular 8100.1D, *Program Guidance for Metropolitan Planning and State Planning and Research Program Grants*, dated September 10, 2018.

#### 5. Period of Availability

The Metropolitan Planning program funds apportioned in this notice are available for obligation during FY 2022 plus three additional fiscal years. Accordingly, funds apportioned in FY 2022 must be obligated in grants by September 30, 2025. Any FY 2022 apportioned funds that remain unobligated at the close of business on September 30, 2025, will revert to FTA for reapportionment under the Metropolitan Planning program.

*B. State Planning and Research Program (49 U.S.C. 5304 and 5305(e))*

This program provides financial assistance to States for statewide transportation planning and other technical assistance activities, including supplementing the technical assistance program provided through the Metropolitan Planning program. The specific requirements of Statewide transportation planning are set forth in 49 U.S.C. 5304 and in 23 CFR part 450, as incorporated by reference in 49 CFR

part 613, Planning Assistance and Standards. State DOTs are required to reference performance measures and performance targets within the Statewide Planning process. This funding must support work elements and activities resulting in comprehensive intermodal transportation planning for the movement of people and goods and has

the same eligibilities as MPP funds. Comprehensive transportation planning is not limited to transit planning or surface transportation planning but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance.

*For more information, contact Victor Austin, Office of Planning and*

*Environment at (202) 366-2996 or victor.austin@dot.gov.*

#### 1. Authorized Amounts

The IIJA authorizes \$167 million over five years to provide financial assistance for statewide planning and other technical assistance activities under section 5305 as follows:

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized .....	\$31,907,061	\$32,573,633	\$33,424,169	\$34,114,633	\$34,981,893

#### 2. FY 2022 Funding Availability

In FY 2022, \$31,907,061 is authorized and appropriated for the period October 1, 2021 through September 30, 2022 to the State Planning and Research Program (section 5305(e)). The total amount apportioned for the State Planning and Research Program (SPRP) is \$32,019,592 as shown in the table below, after the deduction for oversight and addition of reapportioned funds.

#### STATEWIDE PLANNING PROGRAM—FY 2022

Total Appropriation .....	\$31,907,061
Oversight Deductions .....	(159,535)
Reapportioned Funds .....	272,066
Total Apportioned .....	32,019,592

States' apportionments for this program are displayed in Table 2.

#### 3. Basis for Formula Apportionment

The IIJA did not change the funding formula. Of the amount authorized in section 5305, 17.28 percent is allocated to the State Planning and Research program. FTA apportions funds to States by a statutory formula that is based on the most recent decennial Census data available, and the State's UZA population as compared to the UZA population of all States.

#### 4. Requirements

Funds are provided to States for Statewide transportation planning

programs. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, and management training. In addition, a State may authorize a portion of these funds to be used to supplement Metropolitan Planning funds allocated by the State to its UZAs, as the State deems appropriate. Program guidance for the State Planning and Research program is found in FTA Circular 8100.1D, *Program Guidance for Metropolitan Planning and State Planning and Research Program Grants*, dated September 10, 2018.

#### 5. Period of Availability

The State Planning and Research program funds apportioned in this notice are available for obligation during FY 2022 plus three additional fiscal years. Accordingly, funds apportioned in FY 2022 must be obligated in grants by September 30, 2025. Any FY 2022 apportioned funds that remain unobligated at the close of business on September 30, 2025 will revert to FTA for reapportionment under the State Planning and Research program.

#### *C. Urbanized Area Formula Program (49 U.S.C. 5307)*

The Urbanized Area Formula Program provides Federal assistance for capital, planning, job access and reverse commute projects, and, in some cases, operating assistance for public

transportation in urbanized areas. An urbanized area (UZA) is an area with a population of 50,000 or more that has been defined and designated as such by the U.S. Census Bureau. Program funds are apportioned to urbanized areas through a statutory formula. In addition, \$30 million is allocated each year under this program to passenger ferry projects through a discretionary funding competition.

*For more information about the Urbanized Area Formula Program, contact Bret Martin with the Office of Transit Programs, at (202) 366-0870 or bret.martin@dot.gov.*

#### 1. Authorized Amounts

The IIJA authorizes \$33.5 billion over five years to provide financial assistance for urbanized areas under section 5307. Of the amounts authorized and appropriated for section 5307 in each year, \$30 million is set aside for the competitive discretionary Passenger Ferry Grant Program, 0.75 percent is apportioned to eligible States for State Safety Oversight (SSO) Program grants, 3 percent is apportioned to small transit intensive cities, and 0.75 percent is set aside for program oversight.

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized .....	\$6,408,288,249	\$6,542,164,133	\$6,712,987,840	\$6,851,662,142	\$7,025,844,743

#### 2. FY 2022 Funding Availability

A total of \$6,408,288,249 is authorized and appropriated for the section 5307 program for FY 2022. The total amount apportioned to urbanized areas is \$6,920,874,612 which includes the addition of amounts apportioned to UZAs pursuant to the Section 5340

Growing States and High-Density States Formula factors and reapportioned funds. This amount excludes the set-aside for the Passenger Ferry Discretionary Program, apportionments under the State Safety Oversight Program, and oversight (authorized by

section 5338), as shown in the table below:

#### URBANIZED AREA FORMULA PROGRAM—FY 2022

Total Appropriation .....	\$6,408,288,249
Oversight Deductions .....	(48,062,162)
State Safety Oversight Program	(48,062,162)

### URBANIZED AREA FORMULA PROGRAM—FY 2022—Continued

Passenger Ferry Program .....	(30,000,000)
5340 High Density States .....	348,290,112
5340 Growing States .....	280,465,968
Reapportioned Funds .....	9,954,607
Total Apportioned .....	6,920,874,612

<sup>a</sup>Includes 3 percent set-aside for Small Transit Intensive Cities Formula.

Table 3 displays the amounts apportioned under the Urbanized Area Formula Program.

The FY 2022 Appropriations provides \$48,062,162 for the State Safety Oversight Program and with the addition of \$6.5 million in Transit Infrastructure Grants, of which \$3,250,000 must be made available for low or zero-emission ferries and infrastructure, provides a total of \$36.5 million for the Passenger Ferry Program.

#### 3. Basis for Formula Apportionment

FTA apportions Urbanized Area Formula Program funds based on statutory formulas. Congress established four separate formulas that are used to apportion the available funding: The section 5307 Urbanized Area Formula Program formula, the Small Transit Intensive Cities (STIC) formula, the Growing States and High-Density States formulas, and a formula based on low-income population.

The IIJA made changes to the apportionment formula for FY 2022 through 2026. The percentage of funds allocated on the basis of Small Transit Intensive Cities (STIC) factor increased to 3 percent. Additionally, the takedown for the State Safety Oversight grant program has increased to 0.75 percent.

Consistent with prior apportionment notices, Table 3 shows a total section 5307 apportionment for each UZA, which includes amounts apportioned under each of these formulas. Detailed information about the formulas is provided in Table 4. For technical assistance purposes, the UZAs that receive STIC funds are listed in Table 6. FTA will provide breakouts of the funding allocated to each UZA under these formulas upon request to the FTA Regional Office.

#### a. Section 5307—Urbanized Area Formula

For UZAs between 50,000 and 199,999 in population, the section 5307 formula is based on population and population density. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, bus operating costs, fixed guideway vehicle revenue miles, and fixed guideway route miles, as well

as population and population density. The Urbanized Area Formula is defined in 49 U.S.C. 5336.

To calculate a UZA's FY 2022 apportionment, FTA used population and population density statistics from the 2010 Census and validated mileage and transit service data from transit provider's 2020 National Transit Database (NTD) Report Year (when applicable). Consistent with section 5336(b), FTA has included 27 percent of the fixed guideway directional route miles and vehicle revenue miles from eligible urbanized area transit systems, but which were attributable to rural areas outside of the urbanized areas from which the system receives funds. FTA has calculated dollar unit values for the formula factors used in the Urbanized Area Formula Program apportionment calculations. These values represent the amount of money each unit of a factor is worth in this year's apportionment. The unit values change each year, based on all of the data used to calculate the apportionments, as well as the amount appropriated by Congress for the apportionment. The dollar unit values for FY 2022 are displayed in Table 5. To replicate the basic formula component of a UZA's apportionment, multiply the dollar unit value by the appropriate formula factor (*i.e.*, the population, population x population density), and when applicable, data from the NTD (*i.e.*, route miles, vehicle revenue miles, passenger miles, and operating cost).

The Census Bureau has indicated that it will release urbanized area boundaries and definitions from the 2020 Census in summer 2022 or later. FTA anticipates implementing these new boundaries and definitions in the FY 2023 apportionments. FTA requested comments on its procedures for incorporating the urbanized area changes into NTD reporting and published its final determination in a **Federal Register** Notice (87 FR 20500).

#### b. Small Transit Intensive Cities Formula

Under the STIC formula, FTA apportions 3 percent of the funds made available for section 5307 to UZAs that are under 200,000 in population and have public transportation service that operates at a level equal to or above the industry average for UZAs with a population of at least 200,000, but not more than 999,999. STIC funds are apportioned on the basis of one or more of six performance categories: Passenger miles traveled per vehicle revenue mile, passenger miles traveled per vehicle revenue hour, vehicle revenue miles per capita, vehicle revenue hours per capita,

passenger miles traveled per capita, and passengers per capita.

The data used to determine a UZA's eligibility under the STIC formula and to calculate the STIC apportionments was obtained from the NTD. Because performance data change with each year's NTD reports, the UZAs eligible for STIC funds and the amount each receives may vary each year. UZAs that received funding through the STIC formula for FY 2022 are listed in Table 6.

#### c. Section 5340—Growing States and High-Density States Formula

FTA also apportions funds to qualifying UZAs and States according to the section 5340 Growing States and High-Density States formula, as shown in Table 3. More information on this program and its formula is found in section IV.P. of this notice.

#### d. Low-Income Population

The IIJA does not change the formula factor for low-income population. Of the amount authorized and appropriated for the Urbanized Area Formula Program in each year, 3.07 percent is apportioned on the basis of low-income population.

As specified in statute, FTA apportions 75 percent of the available funds to UZAs with a population of 200,000 or more. Funds are apportioned based on the ratio of the number of low-income individuals in each UZA to the total number of low-income individuals in all urbanized areas of that size. FTA apportions the remainder of the funds (25 percent) to UZAs with populations of less than 200,000, according to an equivalent formula. The low-income populations used for this calculation were based on the American Community Survey (ACS) data set for 2015–2019. This information is updated by the Census Bureau annually.

#### 4. Eligible Expenses

Eligible activities include planning, engineering design and evaluation of transit projects and other technical transportation-related studies; capital investments in bus and bus-related activities such as replacement of buses, overhaul and rebuilding of buses; crime prevention and security equipment; construction of maintenance and passenger facilities; and capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software. All preventive maintenance and some Americans with Disabilities Act complementary paratransit service costs are considered

capital costs. For urbanized areas with populations less than 200,000, operating assistance is an eligible expense. In areas over 200,000 in population, operating assistance is an eligible expense if the special rule (100 Bus Rule) at 49 U.S.C. 5307(a)(2) applies. Job access and reverse commute activities remain eligible under the program.

In addition, recipients may use up to one-half of one percent of their section 5307 funds to support workforce development activities at an 80 percent Federal share; the eligible workforce development activities are defined in Section 5314; see Section IV. K. of this notice for more information. This provision is in addition to the one-half of one percent that recipients may use for training activities with the National Transit Institute.

#### 5. Requirements

Program guidance for the Urbanized Area Formula Program is found in FTA Circular 9030.1E, *Urbanized Area Formula Program: Program Guidance and Application Instructions*, dated January 16, 2014, and is supplemented by additional information and changes provided in this notice and that may be posted to the FTA's section 5307 web page. FTA is in the process of updating the program circular to incorporate changes resulting from amendments to 49 U.S.C. 5307.

Key program requirements and changes that apply to all programs are addressed in section III.D. of this notice, "Cross-Cutting Programmatic Requirements and Changes." The following subsections outline several important program requirements and changes that apply specifically to the Urbanized Area Formula Program.

#### 6. Period of Availability

Funds made available under Section 5307 are available for obligation during the year of apportionment plus five additional years. This is unchanged under the IIJA. Accordingly, funds apportioned in FY 2022 must be obligated in grants by September 30, 2027. Any FY 2022 apportioned funds that remain unobligated at the close of business on September 30, 2027, will revert to FTA for reapportionment

under the Urbanized Area Formula Program.

Funds allocated under the Passenger Ferry discretionary program follow the same period of availability as section 5307. Accordingly, funds allocated in FY 2022 must be obligated in grants by September 30, 2027. Any of the funds allocated in FY 2022 that remain unobligated at the close of business on September 30, 2027, will revert to FTA for reallocation under the Passenger Ferry program.

#### 7. What's New and Other Program Highlights

Recipients that serve urbanized areas with populations of 200,000 or more are required to allocate not less than 0.75 percent of their Urbanized Area Formula Program funds to safety-related projects. It should be noted however, some safety expenditures identified to satisfy the safety requirement may also be used to support the 1% requirement for security-related projects for the UZA if the recipient can justify the expense as both a safety and a security expense.

#### D. Fixed Guideway Capital Investment Grants Program (49 U.S.C. 5309)

The Capital Investment Grants (CIG) Program includes three types of eligible projects—New Starts projects, Small Starts projects, and Core Capacity Improvement projects. Funding is provided for construction of: (1) New fixed guideway systems or extensions to existing fixed guideway systems such as rapid rail (heavy rail), commuter rail, light rail, trolleybus (using overhead catenary), cable car, passenger ferries, and bus rapid transit operating on an exclusive transit lane for the majority of the corridor length that also includes features that emulate the services provided by rail fixed guideway including defined stations, traffic signal priority for public transit vehicles, and short headway bi-directional service for a substantial part of weekdays and weekends; (2) corridor-based bus rapid transit service that does not operate on an exclusive transit lane but includes features that emulate the services provided by rail fixed guideway including defined stations, traffic signal priority for public transit vehicles, and

short headway bi-directional services for a substantial part of weekdays; and (3) projects that expand the capacity by at least 10 percent of an existing fixed guideway corridor that is at capacity today or will be in ten years.

Projects become candidates for funding under the Capital Investment Grants program by successfully completing steps in the multi-year process defined in section 5309 and obtaining a satisfactory rating under the statutorily defined criteria. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects the steps in the process include project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multi-year Federal commitment to the project. Small Starts projects receive construction funds through a single year grant or an expedited grant agreement that defines the scope of the project and specifies the Federal commitment to the project.

Bundles of CIG projects, comprised of multiple New Starts, Core Capacity, and/or Small Starts projects being pursued by the same project sponsor, are also allowed. Bundles must enhance or increase the capacity of the transportation system and streamline procurements or enable time or cost savings for the projects.

For more information about the Capital Investment Grants program contact Elizabeth Day, Office of Capital Project Development, at (202) 366–5159 or [elizabeth.day@dot.gov](mailto:elizabeth.day@dot.gov).

For information about published allocations contact Kevin Osborn, Office of Transit Programs, at (202) 366–7519 or [Kevin.Osborn@dot.gov](mailto:Kevin.Osborn@dot.gov).

#### 1. Authorized Amounts

The IIJA authorizes \$15 billion to be appropriated over five years for the CIG program and the Expedited Project Delivery Pilot Program (EPD), with an additional \$8 billion in advance appropriations.

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized to be Appropriated ....	\$3,000,000,000	\$3,000,000,000	\$3,000,000,000	\$3,000,000,000	\$3,000,000,000
Advance Appropriations .....	1,600,000,000	1,600,000,000	1,600,000,000	1,600,000,000	1,600,000,000
Total .....	4,600,000,000	4,600,000,000	4,600,000,000	4,600,000,000	4,600,000,000

## 2. FY 2022 Funding Availability

In addition to the advance appropriations of \$1,600,000,000, \$2,248,000,000 was appropriated in FY 2022, for a total of \$3,848,000,000 for the section 5309 CIG and EPD programs. After the oversight deduction, \$3,809,520,000 is available for eligible projects under the program.

### CAPITAL INVESTMENT GRANT PROGRAM—FY 2022

Total Appropriation .....	\$3,848,000,000
Oversight Deduction .....	(38,480,000)
Total Apportioned .....	3,809,520,000

## 3. Basis for Allocation

Funds are allocated on a discretionary basis and subject to program evaluation.

## 4. Eligible Expenses

See beginning of section D above.

## 5. Requirements

Project sponsors should reference the FTA website at [www.transit.dot.gov](http://www.transit.dot.gov) for the most current Capital Investment Grants program policy guidance to learn what is required to enter and advance through the program. Grant-related guidance is found in FTA Circular 9300.1B, *Capital Investment Grant Program Guidance and Application Instructions*, November 1, 2008; and C5200.1A, *Full Funding Grant Agreement Guidance*, December 5, 2002, which will be updated to incorporate the changes made by the IIJA.

## 6. Period of Availability

Funding is available for four years, which is the fiscal year in which the amount is made available plus three additional years. Therefore, funds for a project identified in FY 2022 must be obligated for the project by September 30, 2025. Section 5309 funds that remain unobligated after four fiscal years to the projects for which they were originally designated may be made available for other section 5309 projects.

## 7. What's New and Other Program Highlights

### a. New Starts, Small Starts and Core Capacity

The IIJA amended the Capital Investment Grants Program (CIG) by changing the eligibility parameters as described below and eliminating the Program of Interrelated Projects and replacing it with a process for bundling of projects. Under 49 U.S.C. 5309, as amended by the IIJA, New Starts projects are defined as projects with a total capital cost of \$400 million or greater or that are seeking \$150 million

or more in section 5309 funding. Previously, these thresholds were \$300 million and \$100 million respectively. Eligible New Starts projects are new fixed-guideway systems, such as rapid rail (heavy rail), commuter rail, light rail, streetcars, trolleybus (using overhead catenary), cable car, passenger ferries, and fixed guideway bus rapid transit, or an extension of any of these systems. Fixed guideway bus rapid transit is defined as operating on an exclusive transit lane for the majority of the corridor length and that also includes features that emulate the services provided by rail fixed guideway including defined stations, traffic signal priority for public transit vehicles, and short headway bi-directional service for a substantial part of weekdays and weekends.

Small Starts projects are defined as projects with a total capital cost less than \$400 million and that are seeking less than \$150 million in section 5309 funding. Previously, these thresholds were \$300 million and \$100 million respectively. Eligible Small Starts projects are those mentioned for the New Starts program, as well as corridor-based bus rapid transit projects that do not operate on a separated fixed guideway but include features that emulate the services provided by rail fixed guideway including defined stations, traffic signal priority for public transit vehicles, and short headway bi-directional services for a substantial part of weekdays.

Core Capacity Improvement projects are defined as substantial, corridor-based investments in existing fixed guideway systems that are at capacity today or will be in ten years. Previously, the timeframe was five years. A Core Capacity Improvement project must increase the capacity of the existing fixed guideway system in the corridor by at least 10 percent. Core Capacity projects cannot include elements designed to maintain a state of good repair. This was not changed from the eligibility under the FAST Act.

The number of steps in the process for projects has not changed. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects the steps in the process include project development and construction. FTA must evaluate and rate projects seeking section 5309 funding according to statutorily defined criteria at various steps in the process. Bundles of CIG projects, comprised of multiple New Starts, Core Capacity, or Small Starts projects being pursued by the same project sponsor, are now allowed.

Bundles must enhance or increase the capacity of the transportation system and streamline procurements or enable time or cost savings for the projects.

FTA has issued and will issue additional guidance regarding implementation of the IIJA amendments to 49 U.S.C. 5309.

### b. Expedited Project Delivery for Capital Investment Grants Pilot Program

The IIJA made several modifications to the pilot program. Eligible projects for the pilot program include New Starts, Small Starts, or Core Capacity improvement projects that have not yet received a full funding grant agreement. However, the definitions of New Starts, Small Starts, and Core Capacity differ slightly from those used in the Capital Investment Grants program.

A New Starts project under the EPD pilot program is defined as a project with a total capital cost of \$400 million or greater or that is seeking \$150 million or more in funding from the pilot program. A Small Starts project under the pilot program is defined as a project with a total capital cost less than \$400 million and that is seeking less than \$150 million in funding from the pilot program. A Core Capacity Improvement project under the pilot program is defined as a substantial, corridor-based capital investment in an existing fixed guideway system that increases the capacity of the corridor by not less than 10 percent, and can include elements designed to maintain a state of good repair.

Up to eight projects may be selected for the pilot program. Projects must be supported at least in part through a public-private partnership but must be operated and maintained by employees of an existing provider of fixed guideway or bus rapid transit services in the area. The maximum Federal funding provided to projects selected for the pilot program is 25 percent.

The IIJA also requires that FTA determine a proposed pilot project is justified based on its mobility improvements, environmental benefits, congestion relief, economic development effects, and estimated ridership and that it is supported by an acceptable degree of local financial commitment. FTA published a Notice of Funding Opportunity in the **Federal Register** that described the process for project sponsors to apply to FTA for consideration as a pilot project. For further information, see 85 FR 45460.

E. Enhanced Mobility of Seniors and Individuals With Disabilities Program (49 U.S.C. 5310)

The Enhanced Mobility of Seniors and Individuals with Disabilities Program provides formula funding apportioned to direct recipients: States for rural (under 50,000) and small urban areas (50,000–200,000); and designated recipients chosen by the Governor of the State for large urban areas (populations of 200,000 or more); or a State or local governmental entity that operates a public transportation service. The Section 5310 program provides capital and operating assistance for improving the mobility for seniors and individuals with disabilities by removing barriers to

transportation service and expanding transportation mobility options. This program supports transportation services planned, designed, and carried out to meet the special transportation needs of seniors and individuals with disabilities in all areas. This program provides funds to: (1) Serve the special needs of transit-dependent populations beyond traditional public transportation service, where public transportation is insufficient, inappropriate, or unavailable; (2) projects that exceed the requirements of the Americans with Disabilities Act (ADA); (3) projects that improve access to fixed-route service and decrease reliance on complementary paratransit; and (4)

projects that are alternatives to public transportation. For more information about the Section 5310 program, contact Destiny Buchanan, Office of Transit Programs, at (202) 493–8018 or [Destiny.Buchanan@dot.gov](mailto:Destiny.Buchanan@dot.gov).

1. Authorized Amounts The IIJA authorizes \$1,943,105,343 to be appropriated over five years for the Enhanced Mobility of Seniors and Individuals with Disabilities formula program, with an additional \$250 million provided in advance appropriations. This amount does not include funding for the Innovative Coordinated Access and Mobility Pilot Program.

Fiscal year	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
5310 Formula Grants .....	\$421,247,094	\$429,002,836	\$438,899,052	\$446,932,778	\$457,023,583

2. FY 2022 Funding Availability

In FY 2022, \$421,247,094 is appropriated for the program. A total of \$422,037,792 is available for allocation after the oversight and administrative deduction, transfer to the US DOT Office of Inspector General, and addition of reapportioned funds as shown in the table below.

SECTION 5310 FORMULA PROGRAM—FY 2022

Total Appropriation .....	\$421,247,094
Oversight and Administrative .....	(2,851,235)
Transfer to OIG .....	(5,000)
Reapportioned Funds .....	3,646,933
Total Apportioned .....	422,037,792

3. Basis for Formula Apportionment

Sixty percent of the funds are apportioned among designated recipients for urbanized areas with a population of 200,000 or more individuals. Twenty percent of the funds are apportioned among the States for their urbanized areas with a population of at least 50,000 but less than 200,000. Twenty percent of the funds are apportioned among the States for rural areas with a population of less than 50,000. Census Data on Older Adults and People with Disabilities is used for the Section 5310 Enhanced Mobility of Older Adults and People with Disabilities Apportionments. To view the Section 5310 table which displays the amounts apportioned under the Enhanced Mobility of Seniors and Individuals with Disabilities Program click here: <https://www.transit.dot.gov/funding/apportionments>.

Under the Section 5310 formula, funds are allocated using Census data on seniors (i.e., persons 65 and older) and people with disabilities. However, beginning in 2010, the Census Bureau stopped collecting this demographic information as part of its decennial census. Data on seniors and people with disabilities is now only available from the American Community Survey (ACS), which is conducted and published on a rolling basis. FTA’s FY 2022 Section 5310 apportionments incorporate ACS data published in December 2020. Data on seniors comes from the ACS 2015–2019 five-year data set, Table B01001, “Sex by Age.” Data on persons with disabilities comes from the ACS 2015–2019 five-year data set, Table S.1810, “Disability Characteristics.”

4. Eligible Expenses

Section 5310 funds are available for capital and operating expenses to support the provision of transportation services to meet the specific needs of seniors and individuals with disabilities. Of the amounts apportioned to states and designated recipients, not less than 55 percent of funds must be used for “traditional” Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. This includes capital equipment such as buses and vans; wheelchair lifts, ramps, and securement devices; transit-related information technology systems including

scheduling/routing/one-call systems; and mobility management programs. The acquisition of transportation services under a contract, lease, or other arrangement is also eligible. Both capital and operating costs associated with contracted service are eligible capital expenses. The capital eligibility of acquisition of services is limited to the Section 5310 program.

5. Requirements

Up to 45 percent of an area’s apportionment may be used for additional public transportation projects that: Exceed the Americans with Disabilities Act minimum requirements; improve access to fixed-route service and decrease reliance by individuals with disabilities on ADA-complementary paratransit service; or provide alternatives to public transportation that assist seniors and individuals with disabilities with transportation. This includes projects eligible under the former New Freedom program.

a. Eligible Recipients

Eligible direct recipients include States for rural and small urban areas and designated recipients chosen by the Governor of the State for large urban areas. Federally recognized Indian tribes and State or local governmental entities that operate a public transportation service are also eligible direct recipients. For urbanized areas less than 200,000 in population and in the rural areas, the State is the designated recipient for section 5310. Section 5310 designated recipients remain in effect until changed by the Governor of a State by officially notifying the appropriate

FTA regional administrator of re-designation.

In urbanized areas over 200,000 in population, the recipient charged with administering the Section 5310 Program must be officially designated in accordance with the planning process, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation prior to grant award (See definition of designated recipient, 49 U.S.C. 5302(5)). Designated recipients are responsible for administering the program. Responsibilities include: Notifying eligible local entities of funding availability; developing project selection processes; determining project eligibility; developing the program of projects; and ensuring that all subrecipients comply with Federal requirements.

Although FTA will only award grants to the eligible recipients for the program, there are other entities eligible to receive funding as subrecipients. These include private nonprofit organizations, and state or local governmental authorities approved by a state to coordinate services for seniors and people with disabilities, or state or local governmental authorities which certify to the Governor that no nonprofit organizations or associations are readily available in an area to provide the service.

#### b. Local Match

The matching requirements for this program remain the same; capital assistance is provided on an 80 percent Federal share, 20 percent local share. Operating assistance requires a 50 percent local share. Funds provided under other Federal programs (other than those of the U.S. DOT, with the exception of the Federal Lands Transportation Program and Tribal Transportation Program established by sections 202 and 203 of title 23, U.S.C.) may be used for local match for funds provided under Section 5310, and revenue from service contracts may be used as local match.

#### c. Planning and Consultation

The coordinated planning provision requires that all projects be included in the local coordinated human service-public transportation plan.

FTA requires the following elements, at a minimum, be included in the plans:

- i. An assessment of available services that identifies current transportation providers (public, private, and nonprofit);
- ii. An assessment of transportation needs for individuals with disabilities and seniors;

- iii. Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to achieve efficiencies in service delivery; and,

- iv. Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified.

Additionally, the plan must be developed and adopted with representation from seniors, individuals with disabilities, representatives of public, private, nonprofit transportation and human services providers, and other members of the public. Recipients must certify that projects were selected from this process and must make reference to the plan in the program of projects, which is described below.

#### d. State and Project Management Plans

FTA will continue to require States, designated recipients, and State or local governmental entities that operate a public transportation service who are responsible for implementing the Section 5310 program to document their approach to managing the program. The primary purposes of State or Program Management Plans are to serve as the basis for FTA management reviews of the program, and to provide public information on the administration of the programs.

#### e. Program of Projects (POP)

Designated recipients are required to develop a Program of Projects (POP) with the grant application and submit it to the FTA Regional Office. The POP should be developed with respect to the coordinated plan, long range plan, and the transportation improvement plan.

For additional guidance in developing the required POP, recipients can use Chapter IV of the FTA Circular 9070.1G, *Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions*, dated July 7, 2014.

#### 6. Period of Availability

For Enhanced Mobility of Seniors and Individuals with Disabilities Program funds apportioned under this notice, FTA has administratively set the period of availability to the year of apportionment plus two years. Accordingly, funds apportioned in FY 2022 must be obligated in grants by September 30, 2024. Any FY 2022 apportioned funds that remain unobligated at the close of business on September 30, 2024, will revert to FTA for reapportionment among the States and urbanized areas.

#### 7. What's New and Other Program Highlights

The IIJA continues the Section 5310 program without change. Recipients may continue to use a competitive selection process to select projects, but it is not required. A State may transfer apportioned funds between small urbanized areas and rural areas if it can certify that the needs are being met in the area to which the funds were originally apportioned. The State can transfer the funds (rural and small urbanized area) to any area within the state if a statewide program for Section 5310 is established. There are no administrative or statutory provisions to permit transferring Section 5310 funds to other FTA programs nor is there a provision for large urbanized areas to transfer their funds to the State.

Section 5310 program recipients may continue to partner with meal delivery programs such as the OAA-funded meal programs (to find local programs, visit: [www.Eldercare.gov](http://www.Eldercare.gov)) and the USDA Summer Food Service Program <http://www.fns.usda.gov/sfsp/summer-food-service-program-sfsp>. Transit service providers receiving Section 5310 funds may coordinate and assist in providing meal delivery services on a regular basis as long as this does not conflict with the provision of transit services.

Program Guidance is found in FTA Circular 9070.1G, *Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions*, dated July 7, 2014.

The Innovative Coordinated Access and Mobility Pilot program created through Section 3006(b) of the Fixing America's Surface Transportation (FAST) Act, is continued through IIJA.

#### F. Formula Grants for Rural Areas Program (49 U.S.C. 5311)

The Rural Areas program provides formula funding to States and Indian tribes for the purpose of supporting public transportation in areas with a population of less than 50,000. Funding may be used for capital, operating, planning, job access and reverse commute projects, and State administration expenses. Eligible subrecipients include State and local governmental authorities, Indian Tribes, private non-profit organizations, and private operators of public transportation services, including intercity bus companies. Indian Tribes are also eligible direct recipients under Section 5311, both for funds apportioned to the States and for projects apportioned or selected to be

funded with funds set aside for a separate Tribal Transit Program.

*For more information about the Formula Grants for Rural Areas program, contact Elan Flippin, Office of Transit Programs, at (202) 366-3800 or elan.flippin@dot.gov.*

#### 1. Authorized Amounts

The IIJA authorizes \$4.1 billion over five years to provide financial assistance for rural areas under section 5311(c)(3). The Section 5311 program includes three other programs: The Rural Transit

Assistance Program (RTAP); the Appalachian Development Public Transportation Assistance Program; and the Tribal Transit Program. These separate programs are described in the sections that follow.

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized .....	\$785,148,545	\$801,551,125	\$822,480,580	\$839,471,067	\$860,812,057

In addition to the funds made available to States under Section 5311, approximately 14 percent of the funds authorized for the Section 5340 Growing States formula factors will be apportioned to States for use in rural areas.

#### 2. FY 2022 Funding Availability

In FY 2022, a total of \$785,148,545 is authorized and appropriated for the section 5311 program for the period October 1, 2021, through September 30, 2022. The total amount apportioned is \$893,663,711 to Section 5311 programs and includes the amount for Growing States formula factors, reapportioned funds, and deduction for oversight (required by section 5338), as shown in the table below.

#### FORMULA GRANTS FOR RURAL AREAS PROGRAM—FY 2022

Total Appropriation .....	\$785,148,545
Oversight Deductions .....	(4,376,448)
Section 5340 Growing States .....	112,286,712
Reapportioned Funds .....	604,902
Total Apportioned .....	893,663,711

#### 3. Basis for Formula Apportionment

The IIJA made no changes to the formula for the Rural Areas Program. FTA apportions Section 5311 funds to the states by a statutory formula using the latest available U.S. decennial census data. The majority of rural formula funds (83.15 percent) are apportioned based on land area and population factors. In this first tier, no state may receive more than 5 percent of the amount apportioned on the basis of land area. The remaining rural formula funds (16.85 percent) are apportioned based on land area, vehicle revenue miles, and low-income individual factors. In this second tier, no state may receive more than 5 percent of the amount apportioned on the basis of land area, or more than 5 percent of the amounts apportioned for vehicle revenue miles. In addition to funds made available under Section 5311, FTA adds amounts apportioned based on rural population according to

the growing states formula factors of 49 U.S.C. 5340 to the amounts apportioned to the states under the Section 5311 formula. Before FTA apportions Section 5311 funds to the states, FTA subtracts funding from the total available amounts for the Appalachian Development Transportation Assistance Program, the Tribal Transit Program, the Rural Transportation Assistance Program (RTAP), and FTA oversight activities.

Data from the Rural Module of the National Transit Database (NTD) was used for this apportionment, including data from directly reporting Indian tribes. Data from public transportation systems that reported to the Annual (Urbanized Area) Module, and that was not attributable to an urbanized area, was also included.

#### 4. Eligible Expenses

The Section 5311 program provides funding for capital, operating, planning, job access and reverse commute projects, and administration expenses for public transit service in rural areas under 50,000 in population. The planning activities undertaken with Section 5311 funds are in addition to those awarded to the State under Section 5305 and must be used specifically for rural areas' needs.

##### a. Intercity Bus Transportation

Each State must continue to spend no less than 15 percent of its annual Rural Areas Formula apportionment for the development and support of intercity bus transportation, unless it can certify, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are adequately being met. FTA continues to encourage consultation with other stakeholders, such as communities affected by loss of intercity service. The intercity bus service match requirement in 49 U.S.C. 5311(g)(3) allows the cost of an unsubsidized portion of privately provided intercity bus service that connects feeder service, including all operating and capital costs of such service whether or not offset by revenue from such service, to be used as in-kind

local match for the intercity bus projects.

##### b. State Administration

The IIJA did not change the amount available to States for administration, planning, and technical assistance. States may elect to use up to 10 percent of their apportionment at 100 percent Federal share to administer the Section 5311 program and provide technical assistance to subrecipients. Technical assistance includes project planning, program and management development, public transportation coordination activities, and research the State considers appropriate to promote effective delivery of public transportation to rural areas.

##### c. Eligibility for Safety Certification Training

Recipients of Section 5311 funds are permitted to use not more than 0.5 percent of their formula funds under the Rural Areas program to pay not more than 80 percent of the cost of participation for an employee who is directly responsible for safety oversight to participate in public transportation safety certification training. Safety certification training program requirements are established in accordance with Section 5329.

#### 5. Requirements

The program requirements under this section are generally unchanged, with the exception of the cross-cutting requirements mentioned in section III.D. of this notice and specific subsections outlined below.

The Federal share for capital assistance is 80 percent and for operating assistance is 50 percent, except that States eligible for the sliding scale match under FHWA programs may use that match ratio for Section 5311 capital projects and 62.5 percent of the sliding scale capital match ratio for operating projects. This is not changed under the current authorization.

Each State prepares an annual program of projects, which must provide for fair and equitable distribution of funds within the States,

including Indian reservations, and must provide for maximum feasible coordination with transportation services assisted by other Federal sources.

Additional program guidance for the Rural Areas Program is found in FTA Circular 9040.1G, *Formula Grants for Rural Areas: Program Guidance and Application Instructions*, dated October 24, 2014, and is supplemented by additional information and changes provided in this notice and that may be posted to FTA's Section 5311 web page. FTA is in the process of updating the program circular to incorporate changes resulting from IIJA amendments to 49 U.S.C. 5311.

The following subsections outline several important program requirements that apply specifically to the section 5311 program.

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized .....	\$20,117,845	\$20,538,128	\$21,074,403	\$21,509,749	\$22,056,569

## 2. FY 2022 Funding Availability

In FY 2022, \$20,117,845 is authorized and appropriated for the Section 5311 RTAP program. After the reduction to the National RTAP program, and the addition of reapportioned funds a total of \$17,563,773 is available for allocation to the States, as shown in the table below.

### RURAL TRANSPORTATION ASSISTANCE PROGRAM—FY 2022

Total Appropriation .....	\$20,117,845
National RTAP .....	(2,625,869)
Reapportioned Funds .....	71,797
Total Apportioned .....	17,563,773

Table 12 shows the FY 2022 RTAP allocations to the States.

## 3. Basis for Formula Apportionment

FTA will continue to allocate funds to the States by an administrative formula. First, FTA allocates \$65,000 to each State (\$10,000 to territories), and then allocates the balance based on rural population in the 2010 census.

## 4. Eligible Expenses

Eligible expenses include the design and implementation of training and technical assistance projects, research, and other support services tailored to meet the needs of transit operators in rural areas.

## 6. Period of Availability

Section 5311 funds remain available to states for obligation for three Federal fiscal years, beginning with the year of apportionment plus two additional years. The Rural Areas program funds apportioned in this notice are available for obligation during FY 2022 plus two additional years. Any FY 2022 apportioned funds that remain unobligated at the close of business on September 30, 2024, will revert to FTA for reapportionment under the Rural Areas program.

## 7. What's New and Other Program Highlights

The IIJA did not modify the rural formula program.

## 5. Requirements

States may use the funds to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in rural areas. These funds are to be used in conjunction with a State's administration of the Rural Areas Formula Program, but also may support the rural components of the Section 5310 program.

## 6. Period of Availability

The Section 5311 RTAP funds apportioned in this notice are available for obligation in FY 2022 plus two additional years, consistent with that established for the Section 5311 program.

## 7. What's New and Other Program Highlights

The National RTAP project is administered by cooperative agreement and re-competed at five-year intervals. In 2019, FTA awarded a cooperative agreement to Neponset Valley Transportation Management Association to administer the National RTAP Program. The National RTAP projects are guided by a project review board that consists of managers of rural transit systems and State DOT RTAP programs. National RTAP resources also support the biennial TRB National Conference on Rural Public and Intercity Bus

## G. Rural Transportation Assistance Program (49 U.S.C. 5311(b)(3))

This program is not changed in the IIJA and continues to provide funding to assist in the design and implementation of training and technical assistance projects, research, and other support services tailored to meet the needs of transit operators in rural areas. For more information about Rural Transportation Assistance Program (RTAP) contact *Elan Flippin*, Office of Transit Programs, at (202) 366-3800 or [elan.flippin@dot.gov](mailto:elan.flippin@dot.gov).

### 1. Authorized Amounts

The IIJA authorizes a two percent takedown from the funds appropriated for section 5311 for RTAP. Of this amount, 15 percent is reserved for the National RTAP program. The remainder is available for allocation to the States.

The IIJA authorizes \$105 million over five years to carry out this program.

Transportation and other research and technical assistance projects of a national scope.

## H. Appalachian Development Public Transportation Assistance Program (49 U.S.C. 5311(c)(2))

This program continues as a take-down under the section 5311 program to provide additional funding to support public transportation in the Appalachian region. There are sixteen eligible States that receive an allocation under this provision. The States and their allocation are shown in the Rural Areas Formula program table posted on FTA's website under the FY 2022 Apportionments page.

For more information about the Appalachian Development Public Transportation Assistance Program, contact *Elan Flippin*, Office of Transit Programs, at (202) 366-3800 or [elan.flippin@dot.gov](mailto:elan.flippin@dot.gov).

### 1. Authorized Amounts

The IIJA authorizes a take-down of three percent of Section 5311 funding for the Appalachian Development Public Transportation Assistance Program. A total of \$137.4 million is authorized over five years as shown on the following table to support public transportation in the Appalachian region.

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized .....	\$26,258,687	\$26,807,258	\$27,507,228	\$28,075,461	\$28,789,194

## 2. FY 2022 Funding Availability

A total of \$26,258,687 is authorized and appropriated for the Appalachian Development program for FY 2022, as shown below.

### APPALACHIAN DEVELOPMENT PUBLIC TRANSPORTATION ASSISTANCE PROGRAM—FY 2022

Total Appropriation .....	\$26,258,687
Total Apportioned .....	26,258,687

## 3. Basis for Formula Apportionment

FTA apportions the funds using percentages established under section 9.5(b) of the Appalachian Regional Commission Code (subtitle IV of Title 40 U.S.C.). Allocations are based in general on each State's remaining estimated need to complete eligible sections of the Appalachian Development Highway System as determined from the latest percentages of available cost estimates for completion of the System. Such cost estimates are produced at approximate five-year intervals. Allocations contain upper and lower limits in amounts determined by the Commission and are made in accordance with legislative instructions.

## 4. Requirements

Funds apportioned under this program can be used for purposes

consistent with Section 5311 to support public transportation in the Appalachian region. Funds can be applied for in the State's annual Section 5311 grant.

Appalachian program funds that cannot be used for operating may be used for a highway project under certain circumstances. States should contact their regional office if they intend to request a transfer. Additional information about the requirements for this section can be found in Chapter VII of FTA Circular 9040.1G, *Formula Grants for Rural Areas: Program Guidance and Application Instructions*, dated October 24, 2014.

## 5. Period of Availability

Section 5311 Appalachian program funds are available for three years, which includes the year of apportionment plus two additional years, consistent with that established for the Section 5311 program.

## 6. What's New and Other Program Highlights

The IIJA Establishes fixed funding percentages for the Appalachian Development Public Transportation Assistance programs, providing three percent of Section 5311 funding each year.

### I. Formula Grants for Public Transportation on Indian Reservations Program (49 U.S.C. 5311(c)(1))

The Public Transportation on Indian Reservations Program or Tribal Transit Program (TTP) is continued as a takedown from the Section 5311 program. Over the five-year period from FY 2022 through FY 2026, the program is authorized at a total of \$229 million, of which \$183 million is for a formula program and \$45.8 million is for a discretionary grant program. More information on the discretionary program can be found in section III.6 of this notice. Eligible direct recipients are federally recognized Indian tribes and Alaskan Native Villages providing public transportation in rural areas. The TTP funds are to be allocated for grants to eligible recipients for any purpose eligible under Section 5311, which includes capital, operating, planning, and job access and reverse commute projects.

For more information about the Tribal Transit Program contact Matthew Lange, Office of Transit Programs at (312) 353-4118 or TribalTransit@dot.gov.

## 1. Authorized Funding

Over the five-year period from FY 2022 through FY 2026, the program is authorized at a total of \$229 million, of which \$183 million is for a formula program and \$45.8 million is for a discretionary grant program.

Fiscal year	2022	2023	2024	2025	2026
Formula Funds Authorized .....	\$35,011,582	\$35,743,011	\$36,676,304	\$37,433,948	\$38,385,592
Discretionary Funds Authorized .....	8,752,896	8,935,753	9,169,076	9,358,487	9,596,398
Total .....	43,764,478	44,678,764	45,845,380	46,792,435	47,981,990

## 2. FY 2022 Funding Availability

In FY 2022, \$35,011,582 is authorized and appropriated for the formula program as shown in the table below. After the addition of reapportioned funds, a total of \$35,823,941 is available to be apportioned.

### FORMULA GRANTS FOR PUBLIC TRANSPORTATION ON INDIAN RESERVATIONS PROGRAM—FY 2022

Total Appropriation .....	\$35,011,582
Reapportioned Funds .....	812,359
Total Apportioned .....	35,823,941

## 3. Basis for Formula Apportionment

Funding is allocated by formula and distributed to eligible Indian tribes providing public transportation on tribal lands. The formula apportionment shown in Table 9 is based on a statutory formula which includes three tiers. Tiers 1 and 2 are based on data reported to NTD by Indian tribes; Tier 3 is based on 2009–2013 American Community Survey data. The three tiers for the formula are: Tier 1—50 percent based on vehicle revenue miles reported to the NTD; Tier 2—25 percent provided in equal shares to Indian tribes reporting at least 200,000 vehicle revenue miles to

the NTD; Tier 3—25 percent based on Indian tribes providing public transportation on tribal lands (American Indian Areas, Alaska Native Areas, and Hawaiian Home Lands) on which more than 1,000 low income individuals reside. If more than one tribe provides public transportation services on tribal lands in a single Tribal Statistical area, and the tribes cannot determine how to allocate Tier 3 funds, FTA will allocate the funds based on the relative portion of transit (as defined by unlinked passenger trips) operated by each tribe, as reported to the National Transit Database.

#### 4. Requirements

Formula funds apportioned under this program can be used for purposes consistent with Section 5311 to support public transportation on Indian Reservations in rural areas. Funds allocated under the competitive program must be used consistent with the tribe's proposal and the allocation notice published in the **Federal Register**, which is used to announce the selected projects. Eligible recipients under both the competitive and formula program include federally recognized Indian tribes or Alaska Native villages, groups, or communities as identified by the U.S. Department of the Interior Bureau of Indian Affairs (BIA). A tribe must have the legal, financial and technical capabilities to receive and administer Federal funds.

Section 5335 requires NTD reporting for all direct recipients and beneficiaries of Section 5311 funds. This reporting requirement has and continues to apply to the Tribal Transit Program. Tribes that provide public transportation in rural areas are reminded to report annually so they are included in the TTP formula apportionments. Tribes needing assistance with reporting to the NTD should contact the NTD Helpdesk: [NTDHelp@dot.gov](mailto:NTDHelp@dot.gov) or the Appian NTD Reporting Application Support line: (877) 561-7466.

#### 5. Period of Availability

Funding for the TTP is available for three years, which includes the year of apportionment or allocation plus two additional years, consistent with that established for the section 5311 program. Any FY 2022 formula funds that remain unobligated at the close of business on September 30, 2024, will revert to FTA for reapportionment under the TTP.

#### 6. What's New and Other Program Highlights

The IJA establishes fixed funding percentages for the Public Transportation on Indian Reservations program. Five percent of Rural Formula (Section 5311) funding is available for the Public Transportation on Indian Reservations program. Twenty percent

of the Public Transportation on Indian Reservations funds must be distributed on a competitive basis, while the remainder must be apportioned by formula.

The funds set aside for the TTP are not meant to replace or reduce funds that Indian tribes receive from States through the Section 5311 program but are to be used to enhance public transportation on Indian reservations and transit serving tribal communities. Funds allocated to Indian tribes by the States may be included in the State's Section 5311 application or awarded by FTA in a grant directly to the Indian tribe. FTA encourages Indian tribes intending to apply to FTA as direct recipients to contact the appropriate FTA Regional Office at the earliest opportunity.

TTP recipients must comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out the project supported by the FTA grant. To assist tribes with understanding these requirements, FTA regularly conducts Tribal Transit Technical Assistance Workshops, and expects to offer several workshops in FY 2022. FTA has also implemented the Tribal Transit Technical Assistance Assessments initiative. Through these assessments, FTA collaborates with tribal transit leaders to review processes and identify areas in need of improvement and then assist with solutions to address these needs—all in a supportive and mutually beneficial manner. These assessments include discussions of compliance areas pursuant to the Master Agreement, a site visit, promising practices reviews, and technical assistance from FTA and its contractors. These workshops and assessments received exemplary feedback from Tribal Transit Leaders and provided FTA with invaluable opportunities to learn more about tribal transit leaders' perspectives and honor the sovereignty of tribal nations. FTA will post information about upcoming workshops to its website and will disseminate information about the reviews through its Regional Offices. FTA has regional tribal transit liaisons

in each of the FTA Regional Offices that are available to assist tribes with applying for and managing FTA grants. A list of regional tribal transit liaisons can be found on FTA's website at <https://www.transit.dot.gov/funding/tribal-entities>. Tribes are encouraged to work directly with their regional tribal transit liaison.

The Tribal Transportation Self Governance Program (TTSGP) was authorized by the FAST Act and is codified at 23 U.S.C. 207. The TTSGP final rule became effective on October 1, 2020 (85 FR 33494). Grant funding made available through the FTA formula or competitive TTP may be included in a Tribal Transportation Self-Governance funding agreement if there is an existing Self-Governance compact in place between the Tribe and the Department of Transportation. If funds are transferred to a Tribal Self-Governance funding agreement, the funds will be subject to the requirements and provisions of the Tribal Transportation Self-Governance Program regulation at 49 CFR part 29 and may be used only for the purpose for which they were awarded.

*For more information about the Tribal Transit Program, please contact Matthew Lange at [TribalTransit@dot.gov](mailto:TribalTransit@dot.gov) or 312-353-4118.*

#### J. Public Transportation Innovation (49 U.S.C. 5312)

FTA's innovative research program includes three distinct programs: (a) A Research, Development, Demonstration, Deployment, & Evaluation program (49 U.S.C. 5312(b-e)); (b) a Low or No Emission Vehicle Component Assessment Program (Lo-No CAP) (49 U.S.C. 5312(h)); and (c) a Transit Cooperative Research Program (TCRP) (49 U.S.C. 5312(i)).

*For more information about the Public Transportation Innovation program, contact Mary Leary, Office of Research, Demonstration and Innovation at (202) 366-4052 or [mary.leary@dot.gov](mailto:mary.leary@dot.gov).*

#### 1. Authorized Funding

The IJA authorizes \$192.8 million over five years as follows:

Fiscal year	2022	2023	2024	2025	2026
Research, Development, .....	\$25,261,523	\$25,789,262	\$26,462,651	\$27,009,306	\$27,695,935
Low-No Component Testing .....	5,000,000	5,104,455	5,237,739	5,345,938	5,481,842
Transit Cooperative Research Program	6,578,592	6,716,026	6,891,389	7,033,749	7,212,560
<b>Total .....</b>	<b>36,840,115</b>	<b>37,609,743</b>	<b>38,591,779</b>	<b>39,388,993</b>	<b>40,390,337</b>

## 2. FY 2022 Funding Availability

In FY 2022, \$36,840,115 is authorized for the Public Transportation Innovation program. With the addition of \$12 million in Transit Infrastructure Grants, a total of \$48,840,115 is available in FY 2022.

### PUBLIC TRANSPORTATION INNOVATION—FY 2022

Research, Development, Demonstration, Deployment, & Evaluation .....	\$37,261,523
Low or No Emission Vehicle Component Testing .....	5,000,000
Transit Cooperative Research Program (TCRP) .....	6,578,592
Total Apportioned .....	48,840,115

## 3. Basis for Allocation of Funds

Section 5312 funds are allocated according to the authorized purposes and amounts described above, and then remaining amounts are subject to discretionary allocations where not specifically authorized. For FY 2022, FTA intends to fund projects and activities in support of the FTA FY 2022 action plan in five major areas: Safety, climate and resiliency, equity, economic strength, and transformation. The Consolidated Appropriations Act, 2022, (Pub. L. 117–103) included \$12 million in Transit Infrastructure Grants, including: \$1 million for demonstration and deployment for innovation mobility solutions; \$1 million for the accelerating innovative mobility initiative; and \$10 million for technical assistance, research, demonstration, or deployment activities or projects to accelerate the adoption of zero emissions buses. Projects may be selected through competitive Notices of Funding Opportunity (NOFO), noncompetitive awards, and partnerships with other Federal entities through interagency agreements. Potential recipients can register to receive information on NOFOs that are released under this program on *Grants.gov*.

## 4. Eligible Expenses

Eligible expenses include activities involving: Research; innovation and development; demonstration, deployment, and evaluation; accelerated implementation and deployment of advanced digital construction management systems; evaluation; low or no emission vehicle component testing and research; and the Transit Cooperative Research Program.

## 5. Requirements

The Government share of the cost of a project carried out under this section shall not exceed 80 percent, except if there is substantial public interest or benefit, FTA may approve a greater Federal share. The non-Government share of the cost of a project carried out under this section may be derived from in-kind contributions. If FTA determines that there would be a clear and direct financial benefit to an entity under a grant, contract, cooperative agreement, or other agreement under this section, FTA shall establish a Government share of the costs of the project to be carried out under the grant, contract, cooperative agreement, or other agreement that is consistent with the benefit. However, for the Lo-No Component Testing Program, the Government share is 50 percent; the remaining 50 percent of the costs will be paid by amounts recovered through the fees established by the testing facilities. There is no match requirement for the TCRP.

Application instructions and program management guidelines are set forth in FTA Circular C 6100.1E, Technology Development and Deployment, “Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines” dated April 10, 2015. All research recipients are required to work with FTA to develop approved Statements of Work. FTA will be updating the Circular for the Research program.

## 6. Period of Availability

FTA establishes the period in which the funds must be obligated to the project. If the funds are not obligated within that period of time, they revert to FTA for reallocation under the program.

## 7. What’s New and Other Program Highlights

The IIJA amends 49 U.S.C. 5312 to create an accelerated implementation and deployment of advanced digital construction management systems research program to promote, implement, deploy, demonstrate, showcase, support, and document the application of advanced digital construction management systems, practices, performance, and benefits.

Also amended is the Low or No Emission Vehicle Component Assessment Program (Lo-No CAP). This

program is expanded to allow the competitively selected center(s) to conduct directed technology research and to conduct testing, evaluation, and analysis of low or no emission vehicle components, and new and emerging technology components, intended for use in low or no emission vehicles. LONO–CAP funds may be used to purchase capital equipment and capital projects related to testing low or no emission vehicle components; or research related to advanced vehicle technologies that provide advancements to the entire public transportation industry.

Pursuant to the Small Business Innovation Development Act, a portion of the Section 5312 funds must be set aside for the Department’s Small Business Innovation Research program to address high priority research that will demonstrate innovative, economic, accurate, and durable technologies, devices, applications, or solutions to significantly improve current transit-related service including transit vehicle operation, safety, infrastructure and environmental sustainability, mobility, rider experience, or broadband communication.

### *K. Technical Assistance and Workforce Development (49 U.S.C. 5314)*

The Technical Assistance and Workforce Development program, 49 U.S.C. 5314, provides assistance to: (1) Carry out technical assistance activities that enable more effective and efficient delivery of transportation services, foster compliance with Federal laws, and improve public transportation service; (2) develop standards and best practices for the transit industry; and (3) address public transportation workforce needs through research, outreach, training and the implementation of a frontline workforce grant program, and conduct training and educational programs in support of the public transportation industry.

*For more information about the Technical Assistance and Workforce Development program, contact Betty Jackson, Office of Research, Demonstration and Innovation at (202) 366–4052 or Betty.Jackson@dot.gov.*

## 1. Authorized Amounts

The IIJA authorizes \$61.98 million over five years for technical assistance. Of this amount, \$34.4 million is authorized for the National Transit Institute under section 5314(c);

Fiscal year	2022	2023	2024	2025	2026
Technical Assistance, Standards Development & Human Resource Training National Transit Institute .....	\$5,262,873 6,578,592	\$5,372,820 6,716,026	\$5,513,111 6,891,389	\$5,626,999 7,033,749	\$5,770,048 7,212,560
Total .....	11,841,465	12,088,846	12,404,500	12,660,748	12,982,608

## 2. FY 2022 Funding Availability

In FY 2022, a total of \$11,841,465, is authorized for the Technical Assistance and Workforce Development program for the period October 1, 2021, through September 30, 2022. With the addition of \$7.5 million from the General Fund, a total of \$19,341,465 was appropriated for FY 2022 as shown in the table below.

### TECHNICAL ASSISTANCE AND WORKFORCE DEVELOPMENT—FY 2022

Technical Assistance, Standards Development & Human Resource Training .....	\$12,762,873
National Transit Institute .....	6,578,592
Total Appropriated .....	19,341,465

## 3. Basis for Allocation of Funds

Under the authorized level of section 5314, \$6.6 million is available for the National Transit Institute (NTI) in FY 2022. The remaining \$12.76 million of appropriated funds will be allocated in support of both FTA and USDOT strategic goals for technical assistance, standards development, and workforce development. Projects may be selected through Notices of Funding Opportunity (NOFO) or sole source cooperative agreements. Potential recipients can register to receive notification of NOFOs under this program on *Grants.gov*.

Once selected, FTA enters into cooperative agreements, contracts, or other agreements to award funds and manage the projects carried out under this section.

## 4. Eligible Expenses

Eligible expenses include activities involving (a) technical assistance; (b) standards development; and (c) human resources and training, which includes workforce development programs and activities.

Eligible technical assistance activities may include activities to support: (a) Compliance with the Americans with Disabilities Act (ADA); (b) compliance with coordinating planning and human services transportation; (c) meeting the transportation needs of elderly individuals; (d) increasing transit ridership in coordination with MPOs and other entities, particularly around transit-oriented development; (e)

addressing transportation equity with regard to the effect that transportation planning, investment, and operations have for low-income and minority individuals; (f) facilitating best practices to promote bus driver safety; (g) compliance with Buy America and pre- and post-award audits; (h) assisting with the development and deployment of low and no emission vehicles or components for vehicles; (i) and other technical assistance activities that are necessary to advance the interests of public transportation.

Eligible standards activities include the development of voluntary and consensus-based standards and best practices by the industry to include those needed for safety, fare collection, intelligent transportation systems, accessibility, procurement, security, asset management, operations, maintenance, vehicle propulsion, communications, and vehicle electronics.

Eligible human resources and training activities include (a) employment training programs; (b) outreach programs to increase employment for veterans, females, individuals with disabilities, and minorities in public transportation activities; (c) research on public transportation personnel and training needs; (d) training and assistance for veteran and minority business opportunities; and (e) consensus-based national training standards and certifications in partnership with industry stakeholders. FTA funding directly allocated for these eligible purposes must be done through a competitive frontline workforce development program as required in the authorization. Should FTA allocate funds for these purposes, it will advertise the available funding in a Notice of Funding Opportunity (NOFO) on *Grants.gov* and on its website. FTA will be issuing additional guidance in the coming months on how recipients can utilize their formula funds in support of these eligible activities.

## 5. Requirements

### a. Federal Share

The Government's share of the cost of a project carried out using a grant under this section shall not exceed 80 percent. However, for the human resources and

training, including the Innovative Public Transportation Frontline Workforce Development Program, the Government's share cannot exceed 50 percent. The Federal share for other types of awards will be stated in the agreement. In some cases, FTA may require a higher non-Federal share if FTA determines a recipient would obtain a clear and direct financial benefit from the project, or if the non-Federal share is an evaluation factor under a competitive selection process. There is no match requirement for the National Transit Institute.

### b. Non-Government Share

The non-Government share of the cost of a project carried out under these sections (Technical Assistance and Standards and Technical Assistance and Training) may be derived from in-kind contributions as defined in the most current version of FTA Circular 5010, *Grants Management Guidelines* found on FTA's Circular web page at (<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>). Application instructions and program management guidelines are set forth in FTA Circular 6100.1E, *Research, Technical Assistance and Training Program: Application Instructions and Program Management Guidelines* dated April 10, 2015. All research recipients are required to work with FTA to develop approved Statements of Work.

## 6. Period of Availability

FTA establishes the period in which the funds must be obligated to the project. If the funds are not obligated within that period of time, they revert to FTA for reallocation under the program.

## 7. What's New and Other Program Highlights

Under 49 U.S.C. 5314(b)(4), recipients may use no more than one-half of one percent (0.5 percent) of their section 5307, 5337 and 5339 funds to support workforce development activities. In addition, 49 U.S.C. 5314(c)(4) allows recipients to use no more than one-half of one percent (0.5 percent) of their 5307, 5337, and 5339 funds to attend NTI training. Both provisions allow recipients to use these funds to pay up to 80 percent of the cost of training.

For more information about the NTI, contact Lisa Colbert, at the FTA Office of Research, Demonstration, and Innovation (TRI): [Lisa.colbert@dot.gov](mailto:Lisa.colbert@dot.gov) or call 202-366-9261.

**L. Public Transportation Emergency Relief Program (49 U.S.C. 5324)**

FTA's Emergency Relief (ER) Program is authorized to provide funding for public transportation expenses incurred as a result of an emergency or major disaster. No funding was provided in the Consolidated Appropriations Act, 2022, for this program.

In the event of a publicly declared emergency or disaster, eligible expenses will include emergency operating expenses, such as evacuations, rescue operations, and expenses incurred to protect assets in advance of a disaster, as well as capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system in the United States or on an Indian reservation that the Secretary determines is in danger of suffering serious damage or has suffered serious damage as a result of an emergency. Additional information on eligible expenses and the process for applying for ER Program funding can be found in FTA's *Emergency Relief Manual: A Reference Manual for States & Transit Agencies on Response and Recovery from Declared Disasters and FTA's Emergency Relief Program* (49 U.S.C. 5324), which was published on October 5, 2015.

While Congress did not provide funding for this program in FY 2022, recipients of FTA funding affected by a declared emergency or disaster are authorized to use funds apportioned under sections 5307 and 5311 for emergency purposes. Recipients are advised that formula funds used for emergency purposes will not be replaced or restored in the event Congress subsequently makes funding available through FTA under the ER Program or by the Federal Emergency Management Agency (FEMA).

In the event of a disaster affecting a public transportation system, the affected recipient should contact their FTA Regional Office as soon as practicable to determine whether Emergency Relief funds are available, and to notify FTA that it plans to seek reimbursement for emergency operations or repairs that have already taken place or are in process. If Emergency Relief funds are unavailable the recipient may seek reimbursement from FEMA. Properly documented costs for which the recipient has not received reimbursement from FEMA may later be reimbursed by grants made either from section 5324 funding (if appropriated) or sections 5307 and 5311 program funding, once the eligible recipient formally applies to FTA for reimbursement and FTA determines that the expenses are eligible for emergency relief.

In addition, before receiving a grant under this section following an emergency, the recipient shall: (1) Submit documentation demonstrating proof of insurance required under Federal law for all structures related to the grant application; and (2) certify that the recipient has insurance required under State law for all structures related to the grant application.

Additional information about the Emergency Relief program is available on the FTA website at <https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program>.

For more information, contact Tom Wilson, Office of Program Management, at 202-366-5279 or [Tom.Wilson@dot.gov](mailto:Tom.Wilson@dot.gov).

**M. Public Transportation Safety Program (49 U.S.C. 5329)**

Section 5329(e)(6) provides funding to support States with rail fixed guideway public transportation systems (rail transit systems) to develop and carry out State Safety Oversight (SSO) Programs consistent with the requirements of 49 U.S.C. 5329. For more information, contact Maria Wright, Office of Safety Review at (202) 366-5922 or [maria1.wright@dot.gov](mailto:maria1.wright@dot.gov).

**1. Authorized Amounts**

A total of \$251.6 million is authorized over five years for the State Safety Oversight Program.

Fiscal year	2022	2023	2024	2025	2026
Funds Authorized .....	\$48,062,162	\$49,066,231	\$50,347,409	\$51,387,466	\$52,693,836

**2. FY 2022 Funding Availability**

In FY 2022, \$48,062,162 is authorized and appropriated for the State Safety Oversight (SSO) program. With the addition of reappropriated funds, a total apportionment of \$49,011,483 is provided for FY 2022. The total amount allocated for the SSO program is as shown in the table below.

**PUBLIC TRANSPORTATION SAFETY PROGRAM—FY 2022**

Total Appropriation .....	\$48,062,162
Reappropriated Funds .....	949,321
Total Apportioned .....	49,011,483

**3. Basis for Formula Apportionment**

FTA will continue to allocate funds to the States by an administrative formula, which is detailed in the **Federal Register** notice which apportioned SSO Formula Grant Program FY13 and FY14

funds (79 FR 13380). Grant funds for the SSO program are apportioned to eligible States using a three-tier formula based on statutory requirements, which apportion 60 percent of available funds based on rail transit system vehicle passenger miles (PMT), vehicle revenue miles (VRM), and directional route miles (DRM), 20 percent of available funds equally to each eligible State, and 20 percent based on the number of rail transit systems.

**4. Requirements**

FTA requires each applicant to demonstrate in its grant application that its proposed grant activities will develop, lead to, or carry out a State Safety Oversight program that meets the requirements under 49 U.S.C. 5329(e). Grant funds may be used for program operational and administrative expenses, including employee training activities. Please see the **Federal**

**Register** notice which apportioned SSO Formula Grant Program FY13 and FY14 funds (79 FR 13380) for more information.

**5. Period of Availability**

SSO Formula Grant Program funds are available for the year of apportionment plus two additional years. Any FY 2022 funds that remain unobligated as of September 30, 2024, will revert to FTA for reappropriation under the SSO Formula Grant Program.

**6. What's New and Other Program Highlights**

Under the IJA, the percent takedown for the SSO Formula Grant Program increased from 0.5% to 0.75% of the section 5307 Urbanized Area Formula Program. The IJA enhances State safety oversight programs by strengthening rail inspection practices by providing state safety oversight agencies authority to

collect and analyze data and conduct risk-based inspections of rail fixed guideway transportation systems. FTA continues to be authorized to issue restrictions and prohibitions to address unsafe conditions or practices, and to withhold funds for non-compliance with safety requirements.

*N. State of Good Repair Program (49 U.S.C. 5337)*

The State of Good Repair (SGR) program provides capital assistance for maintenance, replacement, and rehabilitation projects of existing high intensity fixed guideway and high intensity motorbus systems to maintain a state of good repair. Additionally, SGR grants are eligible for developing and implementing Transit Asset

Management plans. This program provides funding for the following fixed guideway transit modes: Rapid rail (heavy rail), commuter rail, light rail, hybrid rail, monorail, automated guideway, trolleybus (using overhead catenary), aerial tramway, cable car, inclined plane (funicular), passenger ferry, and bus rapid transit. Fixed-route bus capital projects for services operating on high-occupancy-vehicle (HOV) facilities are also funded through High Intensity Motorbus tier of this program. Of the amount authorized for Section 5337 each year, \$300 million is set aside for the competitive Rail Vehicle Replacement Program.

FTA published the State of Good Repair program guidance, FTA Circular

5300.1, *State of Good Repair Grants Program: Guidance and Application Instructions*, on January 28, 2015. The circular can be accessed at <https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/final-circulars>.

For more information about the SGR program, contact Kevin Osborn, Office of Transit Programs, at (202) 366-7519 or [Kevin.Osborn@dot.gov](mailto:Kevin.Osborn@dot.gov).

#### 1. Authorized Amounts

The IIJA authorizes \$18.35 billion over five years for the State of Good Repair program, including \$1.5 billion for the newly created Rail Vehicle Replacement Program, and provides an additional \$4.75 billion in advance appropriations.

Fiscal year	2022	2023	2024	2025	2026
SGR Formula Funds Total .....	\$4,165,528,226	\$4,237,778,037	\$4,330,934,484	\$4,405,675,417	\$4,500,496,668
Rail Vehicle Replacement Program .....	300,000,000	300,000,000	300,000,000	300,000,000	300,000,000
Total .....	4,465,528,226	4,537,778,037	4,630,934,484	4,705,675,417	4,800,496,668

#### 2. FY 2022 Funding Availability

In FY 2022, \$4,165,528,226 is authorized and appropriated for the State of Good Repair Formula program. As shown in the table below, these amounts are apportioned to support the State of Good Repair Formula program, for the High Intensity Fixed Guideway Formula program as well as the High Intensity Motorbus Formula program.

##### STATE OF GOOD REPAIR FORMULA PROGRAM—FY 2022

Total Appropriation .....	\$4,165,528,226
Oversight Deductions .....	(54,060,282)
Transfer to OIG .....	(95,000)
Reapportioned Funds .....	131,921
Total Available to Apportion .....	4,111,504,865
Total Apportioned to High Intensity Fixed Guideway Formula .....	3,994,326,976
Total Apportioned to High Intensity Motorbus Formula .....	117,177,889

Table 15 shows the FY 2022 State of Good Repair Program formula apportionments to eligible urbanized areas.

#### 3. Basis for Formula Apportionment

FTA allocates State of Good Repair program funds according to a statutory formula. Funds are apportioned to urbanized areas with high intensity fixed guideway and high intensity motorbus systems that have been in operation for at least seven years. This means that only segments of high intensity fixed guideway and motorbus systems that entered into revenue

service on or before September 30, 2014, are included in the formula, as identified in the NTD.

The law requires that 97.15 percent of the total amount authorized for the State of Good Repair program be apportioned to urbanized areas with “High Intensity Fixed Guideway” systems. The apportionments to urbanized areas with “High Intensity Fixed Guideway” systems are determined by two equal elements: (1) The proportion of the amount an urbanized area would have received in FY 2011 to the total amount apportioned to all urbanized areas in FY 2011 using new fixed guideway definition; (2) the proportion of vehicle revenue miles of an urbanized area to the total vehicle revenue miles of all urbanized areas and the proportion of directional route miles of an urbanized area to the total directional route miles of all urbanized areas. High Intensity Motorbus systems will receive the remaining 2.85 percent of the total amount authorized for the State of Good Repair program, and the apportionments to urbanized areas are based on vehicle revenue miles and directional route miles.

Vehicle revenue miles and directional route miles attributable to an urbanized area must be placed in revenue service at least 7 years before the first day of the fiscal year. A threshold level of more than one mile of high intensity fixed guideway is required in order to receive State of Good Repair funds. Therefore, urbanized areas reporting one mile or less of fixed guideway mileage under

the NTD are not included. FTA will apportion funds to designated recipients in the UZAs (see section IV. C. of this notice for more information about designated recipients; FTA will apportion Section 5337 funds to the Section 5307 designated recipient for the UZA) with high intensity fixed guideway and/or high intensity motorbus systems operating at least 7 years. The designated recipients will then allocate funds as appropriate to recipients that are public entities in the urbanized areas and provide split letters to FTA. FTA can make grants to direct recipients after sub-allocation of funds.

#### 4. Eligible Expenses

Eligible activities include projects that maintain, rehabilitate, and replace transit assets, as well as projects that implement Transit Asset Management plans. Additionally, training and workforce activities authorized under 49 U.S.C. 5314(b) and (c) are eligible for the State of Good Repair funds; funds for such activities are limited to 1 percent of the total amount apportioned to the recipient (0.5 percent for each of the authorized activities).

#### 5. Requirements

In addition to the program guidance found in the circular, all recipients will need to certify that they will comply with the rule issued under Section 5326 for the Transit Asset Management plan, 49 CFR part 625, and SGR projects will need to be included in recipients' Transit Asset Management plans.

## 6. Period of Availability

The State of Good Repair Program funds apportioned in this notice are available for obligation during FY 2022 plus three additional years. Accordingly, funds apportioned in FY 2022 must be obligated in grants by September 30, 2025. Any FY 2022 apportioned funds that remain unobligated at the close of business on September 30, 2025, will revert to FTA for reappportionment under the State of Good Repair Program.

## 7. What's New and Other Program Highlights

The IIJA created as a takedown from Section 5337 authorized amounts for the Rail Vehicle Replacement Program. This is a \$300,000,000 annual takedown.

FTA will issue a NOFO with additional details including eligibility and program requirements.

*O. Grants for Buses and Bus Facilities Program (49 U.S.C. 5339)*

The Section 5339 program provides funding to replace, rehabilitate, and purchase buses and related equipment as well as construct bus-related facilities.

Additional guidance on the Section 5339(a) formula program can be found in FTA Circular 5100.1, which was published on May 18, 2015. This Circular will be updated to reflect the amendments to section 5339 by the IIJA. Information on the Section 5339(b) Buses and Bus Facilities Competitive Grant Program and the Section 5339(c) Low or No Emission Bus Competitive

Grant Program was published in a Notice of Funding Opportunity on March 7, 2022 (87 FR 12528).

For more information about the Buses and Bus Facilities program, contact Amy Volz, Office of Transit Programs at (202) 366-7484 or Amy.Volz@dot.gov.

## 1. Authorized Amounts

The IIJA authorizes a total of \$9.75 billion to be appropriated over five years for the Section 5339 Program. Of that amount, three-quarters of one percent is set aside for oversight. The IIJA provides an additional \$1,050,000,000 in advance appropriations for the Section 5339(c) Low or No Emission Program, with two percent set aside for oversight and administrative expenses.

Fiscal year	2022	2023	2024	2025	2026
5339(a) Formula Program .....	\$599,462,712	\$611,986,119	\$627,965,806	\$640,938,080	\$657,231,976
5339(b) Bus Competitive .....	372,341,813	380,120,424	390,045,823	398,103,239	408,223,797
5339(c) Low or No Emission Discretionary .....	1,100,561,189	1,102,056,178	1,103,963,762	1,105,512,334	1,107,457,427
Oversight, Administrative and OIG transfer .....	28,884,376	29,049,089	29,259,260	29,429,876	29,644,180
Section 5339 Total .....	2,101,250,090	2,123,211,810	2,151,234,651	2,173,983,529	2,202,557,380

## 2. Funding Availability

In FY 2022, \$2,101,250,090 is authorized for section 5339 Buses and Bus Facilities or provided through advance appropriations. The Consolidated Appropriations Act, 2022, provided an additional \$250 million for Transit Infrastructure Grants, including \$175 million for the Buses and Bus Facilities Competitive Program and \$75 million for the Low or No Emission Grant Program, for a total appropriation of \$2,351,250,090 in FY 2022. For the Formula Program, a total apportionment of \$601,222,535 is provided after a takedown for oversight and the addition of reappportioned funds.

## GRANTS FOR BUSES AND BUS FACILITIES FORMULA—FY 2022

Total Appropriation .....	\$603,992,657
Oversight .....	(4,529,945)
Reappportioned Funds .....	1,759,823
Total Apportioned .....	601,222,535

## 3. Basis for Allocation

Section 5339(a) Buses and Bus Facilities formula program funds are apportioned to States, territories, and designated recipients based on a statutory formula. Under the national distribution, each State is allocated \$4 million, and each territory is allocated \$1 million, for use anywhere in the

State or territory. The remainder of the available funding is then apportioned for UZAs based on population, vehicle revenue miles and passenger miles using the same apportionment formula and allocation process as section 5307. Funds for UZAs under 200,000 in population are apportioned to the State through a section 5339(a) Governor's apportionment for allocation to eligible recipients within such areas of the State at the Governor's discretion. Funds for UZAs with populations of 200,000 or more are apportioned directly to one or more designated recipients within each UZA for allocation to eligible projects and recipients within the UZA.

## 4. Eligible Expenses

Eligible capital projects under the Buses and Bus Facilities formula program (Section 5339(a)) continue to include projects to replace, rehabilitate, and purchase buses and related equipment, and projects to construct bus-related facilities. Recipients may use up to one-half of one percent of their Section 5339 funds to support workforce development activities at an 80 percent Federal share; the eligible workforce development activities are defined in Section 5314; see Section IV. K. of this notice for more information. This provision is in addition to the one-half of one percent that the recipients

may use for training activities with the National Transit Institute.

## 5. Requirements

Eligible recipients of the Buses and Bus Facilities formula program (Section 5339(a)) include designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators; and state or local governmental entities that operate fixed route bus service that are eligible to receive direct grants under the Urbanized Area Formula (Section 5307) and Rural Formula (Section 5311) programs. Eligible subrecipients continue to include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income.

The requirements of Section 5307 apply to recipients of Section 5339 funds within an urbanized area. The requirements of Section 5311 apply to recipients of Section 5339 funds within rural areas. For additional program requirements, refer to FTA Circular 5100.1.

## 6. Period of Availability

The Buses and Bus Facilities Formula Program funds apportioned in this notice are available for obligation during FY 2022 plus three additional years.

Accordingly, funds apportioned in FY 2022 must be obligated in grants by September 30, 2025. Any FY 2022 apportioned funds that remain unobligated at the close of business on September 30, 2025, will revert to FTA for reapportionment under the Buses and Bus Facilities Formula Program.

Discretionary program funds authorized under Section 5339(b) and (c) (Bus and Low No, respectively) follow the same period of availability: Year of allocation plus three additional years.

## 7. What's New and Other Program Highlights

The Buses and Bus Facilities formula amounts for the national distribution is increased to \$4 million for each State and \$1 million for each territory. Additionally, both the Buses and Bus Facilities formula and competitive programs now require that applicants should, to the extent possible, utilize Innovative Procurement tools authorized under Section 3019 of the FAST Act, and if less than 5 buses are purchased through a standalone procurement, they must provide a written explanation to FTA explaining why they did not utilize the procurement tools authorized.

## P. Growing States and High-Density States Formula Factors (49 U.S.C. 5340)

The IIJA continues the use of formula factors to distribute additional funds to the Section 5307 and Section 5311 programs for Growing States and High-Density States. FTA will continue to publish single urbanized and rural apportionments that show the total amount for Section 5307 and 5311 programs that includes Section 5340 apportionments for these programs.

### a. Authorized Amounts

The IIJA authorizes \$3.879 billion over five years for the Growing States and High-Density States Formula factors, as shown below:

Fiscal year	2022	2023	2024	2025	2026
Growing States .....	\$392,752,680	\$400,957,696	\$411,427,180	\$419,926,283	\$430,601,628
High Density States .....	348,290,112	355,566,259	364,850,518	372,387,459	381,854,274
Total Funds Authorized .....	741,042,792	756,523,956	776,277,698	792,313,742	812,455,901

### b. FY 2022 Funding Availability

In FY 2022, \$741,042,792 is authorized and appropriated for apportionment in accordance with the formula factors prescribed for Growing States and High-Density States set forth in Section 5340 for FY 2022.

### GROWING STATES AND HIGH-DENSITY STATES FORMULA FACTORS—FY 2022

High-Density 5307 Formula .....	\$348,290,112
Growing States (5307 & 5311) .....	392,752,680
Total Apportioned .....	741,042,792

### c. Basis for Formula Apportionment

Under the Growing States portion of the Section 5340 formula, FTA projects each State's 2025 population by comparing each State's apportionment year population (as determined by the Census Bureau) to the State's 2010 Census population and extrapolating to 2025 based on each State's rate of population growth between 2010 and the apportionment year. Each State receives a share of Growing States funds on the basis of its projected 2025 population relative to the nationwide projected 2025 population.

Once each State's share is calculated, funds attributable to that State are divided into an urbanized area allocation and a non-urbanized area allocation on the basis of the percentage of each State's 2010 Census population that resides in urbanized and non-urbanized areas. Urbanized areas receive portions of their State's urbanized area allocation on the basis of

the 2010 Census population in that urbanized area relative to the total 2010 Census population in all urbanized areas in the State. These amounts are added to the Urbanized Area's Section 5307 apportionment. The States' rural area allocation is added to the allocation that each State receives under the Section 5311 Formula Grants for Rural Areas program.

The High-Density States portion of the Section 5340 formula are allocated to urbanized areas in States with a population density equal to or greater than 370 persons per square mile. Based on this threshold and 2010 Census data, the States that qualify are Maryland, Delaware, Massachusetts, Connecticut, Rhode Island, New York and New Jersey. The amount of funds provided to each of these seven States is allocated on the basis of the population density of the individual State relative to the population density of all seven States. Once funds are allocated to each State, funds are then allocated to urbanized areas within the States on the basis of an individual urbanized area's population relative to the population of all urbanized areas in that State.

## Q. Washington Metropolitan Area Transit Authority Grants

### 1. Authorized Amounts

Under the IIJA, \$150 million is authorized for each fiscal year from 2022 through 2030 for grants to the Washington Metropolitan Area Transit Authority (WMATA). After the one percent oversight takedown, \$148.5 million is available for obligation. Such

funding is authorized under section 601 of the Passenger Rail Investment and Improvement Act of 2008. See Public Law 110-432, Division B, Title VI, as amended by the IIJA.

For more information about WMATA grants, contact Kevin Osborn, Office of Transit Programs, at (202) 366-7519 or Kevin.Osborn@dot.gov.

### WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY GRANTS—FY 2022

Total Appropriation .....	\$150,000,000
Oversight Deduction .....	(1,500,000)
Total Apportioned .....	148,500,000

Grants may be provided for capital and preventive maintenance expenditures for WMATA.

## 2. What's New and Other Program Highlights

The IIJA requires that \$5,000,000 of the funding made available each year be used for grants for the WMATA Office of the Inspector General to carry out operations in accordance with Section 9 of Article III of the WMATA Compact. Grants for capital and preventive maintenance projects may not be made until WMATA notifies the Secretary of Transportation that \$5,000,000 in non-Federal funds has been made available for the exclusive use of the WMATA Office of the Inspector General. Furthermore, the IIJA requires that WMATA reform the WMATA Office of Inspector General and update its capital program planning and reporting procedures. FTA will provide additional

guidance on these requirements to WMATA.

*R. FY 2022 Transit Infrastructure Grants—Community Project Funding*

1. Appropriated Amounts

The Consolidated Appropriations Act, 2022, appropriated \$200,798,267 for Community Project Funding/ Congressionally Directed Spending for 80 projects in 27 States, identified in the accompanying Joint Explanatory Statement. Table 20 identifies the recipient, project, amount and a project ID that will be used to identify the project in TrAMS. As the Consolidated Appropriations Act, 2022 identifies that funds are for projects and activities eligible under Chapter 53, generally applicable Chapter 53 requirements apply to these funds, including the planning requirements of Sections 5303 and 5304; bus testing requirements of Section 5318; general provision requirements of Section 5323 (such as NEPA and Buy America compliance); contract requirements of Section 5325; project management requirements of Section 5327; nondiscrimination requirements of Section 5322; disposition requirements of Section 5334; and applicability of FTA oversight of Section 5338. Non-federal match is not required for these funds. Upon written request by the project sponsor in Table 20 and the requested direct recipient, FTA may approve another entity to act as the direct recipient of the funding and the project sponsor may serve as a subrecipient. Pre-award authority is provided consistent with the requirements for FTA's formula funds as of the date all necessary requirements were met (see Section V, below.) However, before incurring costs, recipients are strongly encouraged to consult with the appropriate FTA Regional office regarding the eligibility of the project for future FTA funds and for questions on environmental requirements, or any other Federal requirements that must be met before incurring pre-award costs.

*For more information about Community Project Funding grants, contact Kevin Osborn, Office of Transit Programs, at (202) 366-7519 or Kevin.Osborn@dot.gov.*

**COMMUNITY PROJECT FUNDING/CONGRESSIONALLY DIRECTED SPENDING—FY 2022**

Total Appropriated .....	\$200,798,267
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**V. FTA Policy and Procedures for FY 2022 Grants**

*A. Automatic Pre-Award Authority To Incur Project Costs*

1. Caution to New Recipients

While FTA provides pre-award authority to incur expenses before grant award for formula programs, it recommends that first-time grant recipients NOT utilize this automatic pre-award authority without verifying with the appropriate FTA Regional Office that all pre-requisite requirements have been met. Commonly, a new recipient may misunderstand pre-award authority conditions and be unaware of all the applicable FTA requirements that must be met in order to be reimbursed for project expenditures incurred in advance of grant award. FTA programs have specific statutory requirements that are often different from those for other Federal grant programs with which new recipient may be familiar. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (e.g., prior to NEPA completion), FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

2. Policy

FTA provides pre-award authority to incur expenses before grant award for certain program areas described below. This pre-award authority allows recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This pre-award spending authority permits an eligible recipient to incur costs on an eligible transit capital, operating, planning, or administrative project without prejudice to possible future Federal participation in the cost of the project. In this notice, FTA provides pre-award authority through the authorization period of the IJA (October 1, 2022, through September 30, 2026) for capital assistance under all formula programs, so long as the conditions described below are met. Pre-award authority is indicated in the application. The actual items of cost associated with the use of pre-award authority are documented in the initial Federal Financial Report (FFR) that is required to be completed prior to the recipient executing the award. FTA provides pre-award authority for

planning and operating assistance under the formula programs without regard to the period of the authorization. For projects funded by competitive programs, pre-award authority may be granted at the time of project selection. All pre-award authority is subject to conditions and triggers stated below:

a. Operating, Planning, or Administrative Assistance

FTA does not impose additional conditions on pre-award authority for operating, planning, or administrative assistance under the formula grant programs. Recipients may be reimbursed for expenses incurred before grant award so long as funds have been expended in accordance with all Federal requirements, costs would have been allowable if incurred after the date of award, and the recipient is otherwise eligible to receive the funding. In addition to cross-cutting Federal grant requirements, program specific requirements must be met. Designated recipients of Section 5310 funds have pre-award authority for the ten percent of the apportionment for program administration.

b. Transit Capital Projects

For transit capital projects, the date that costs may be incurred varies depending on the type of activity and its potential to have a significant impact on the human and natural environment as described in section 3. Conditions below.

c. Public Transportation Innovation, Technical Assistance and Workforce Development

Unless provided for in an announcement of project selections, pre-award authority does not apply to Section 5312 Public Transportation Innovation projects or Section 5314 Technical Assistance and Workforce Development projects. Before an applicant may incur costs for activities under these programs, it must first obtain a written Letter of No Prejudice (LONP) from FTA.

*For more information, contact Lisa Colbert, at the FTA Office of Research, Demonstration, and Innovation (TRI): Lisa.colbert@dot.gov or call 202-366-9261.*

3. Conditions

The conditions under which pre-award authority may be utilized are specified below:

i. Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a

legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project.

ii. All FTA statutory, procedural, and contractual requirements must be met.

iii. No action will be taken by the recipient that prejudices the legal and administrative findings that the Federal Transit Administration must make in order to approve a project.

iv. Local funds expended by the recipient after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant or grant amendment for the project. Local funds expended by the recipient before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds or the undertaking of certain activities that would compromise FTA's ability to comply with Federal environmental laws (e.g., project implementation activities such as land acquisition, demolition, or construction before the date of pre-award authority) may render the project ineligible for FTA funding.

v. The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.

vi. For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

vii. When a grant for the project is subsequently awarded, the grant and the Federal Financial Report in TrAMS must indicate the use of pre-award authority and an initial Federal Financial Report must be submitted in TrAMS to associate those costs with the award.

viii. Environmental Requirements—All Federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. Designated recipients may incur costs for design and environmental review activities for all formula funded projects from the date of the authorization of the formula funds or for discretionary funded projects other than those funded by the Capital Investment Grants (CIG) program from the date of the announcement of the competitive allocation of funds for the project.

For projects that qualify for a categorical exclusion (CE) pursuant to 23 CFR 771.118(c), designated recipients may start activities and incur costs under pre-award authority for property acquisition, demolition, construction, and acquisition of

vehicles, equipment, or construction materials from the date of the authorization of formula funds or the date of the announcement of competitive allocations for the project.

FTA recommends that a grant applicant considering a CE pursuant to 23 CFR 771.118(c) contact the appropriate FTA Regional Office for assistance in determining the proper environmental review process, including other applicable environmental laws, and level of documentation necessary before incurring the above-mentioned costs. This applies especially when the grant applicant believes a c-list CE with construction activities, such as 23 CFR 771.118(c)(8), (9), (10), (12), or (13), or property acquisition applies to its project. If FTA subsequently finds that a project does not qualify for a CE under 23 CFR 771.118(c) and the sponsor has already undertaken activities under pre-award authority, the project will be ineligible for FTA assistance.

For all other non-CIG projects that do not qualify for a CE under 23 CFR 771.118(c), grant applicants may take action and incur costs for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials from the date that FTA completes the environmental review process required by NEPA and its implementing regulations, 23 U.S.C. 139, and other environmental laws, by its issuance of a 23 CFR 771.118(d) CE determination, a finding of no significant impact (FONSI), a combined final environmental impact statement (FEIS)/record of decision (ROD), or a ROD.

ix. Planning and other requirements.

Formula funds must be authorized, or appropriated, and competitive project allocations published or announced, before pre-award authority can be considered.

The requirements that a capital project be included in a locally adopted Metropolitan Transportation Plan, the metropolitan transportation improvement program, and the federally approved statewide transportation improvement program (23 CFR part 450) must be satisfied before the recipient may advance the project beyond planning and preliminary design with non-federal funds under pre-award authority. If the project is located within an EPA-designated non-attainment or maintenance area for air quality, the conformity requirements of the Clean Air Act, 40 CFR part 93, must also be met before the project may be advanced into implementation-related activities under pre-award authority triggered by the completion of the NEPA process.

For a planning project to have pre-award authority, the planning project must be included in an MPO-approved UPWP that has been coordinated with the State.

x. Federal procurement procedures, as well as the whole range of applicable Federal requirements (e.g., Buy America, Davis-Bacon Act, and Disadvantaged Business Enterprise) must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, the administrative flexibility requires a recipient to make certain that no Federal requirements are circumvented.

xi. All program specific requirements must be met. For example, projects under Section 5310 must comply with specific program requirements, including coordinated planning.

Before incurring costs, recipients are strongly encouraged to consult with the appropriate FTA Regional office regarding the eligibility of the project for future FTA funds and for questions on environmental requirements, or any other Federal requirements that must be met.

#### 4. Pre-Award Authority for the Fixed Guideway Capital Investment Grants Program

Projects proposed for Section 5309 Capital Investment Grant (CIG) program funds are required to follow a multi-step, multi-year process defined in law. For New Starts and Core Capacity projects, this process includes three phases—project development (PD), engineering, and construction. For Small Starts projects, this process includes two phases: PD and construction. After receiving a letter from the project sponsor requesting entry into the PD phase, FTA must respond in writing within 45 days whether the information was sufficient for entry. If FTA's correspondence indicates the information was sufficient and the New Starts, Small Starts or Core Capacity project enters PD, FTA extends pre-award authority at that time to the project sponsor to incur costs for PD activities. PD activities include the work necessary to complete the environmental review process and as much engineering and design activities as the project sponsor believes are necessary to support the environmental review process. Upon completion of the environmental review process with a Record of Decision (ROD), Finding of No Significant Impact (FONSI), or Categorical Exclusion (CE) determination by FTA for a New Starts, Small Starts, or Core Capacity

Improvement project, FTA extends pre-award authority to project sponsors to incur costs for as much engineering and design as needed to develop a reasonable cost estimate and financial plan for the project, utility relocation, and real property acquisition and associated relocations for any property acquisitions not already accomplished as a separate project for hardship or protective purposes or right-of-way under 49 U.S.C. 5323(q).

For Small Starts projects, upon completion of the environmental review process and confirmation from FTA that the overall project rating is at least a Medium, FTA extends pre-award authority for vehicle purchases. Upon receipt of a letter notifying a New Starts or Core Capacity project sponsor of the project's approval into the engineering phase, FTA extends pre-award authority for vehicle purchases as well as any remaining engineering and design, demolition, and procurement of long lead items for which market conditions play a significant role in the acquisition price. The long lead items include, but are not limited to, procurement of rails, ties, and other specialized equipment, and commodities.

Please contact the appropriate FTA Regional Office for a determination of activities not listed here, but which meet the intent described above. FTA provides this pre-award authority in recognition of the long-lead time and complexity involved with purchasing vehicles as well as their relationship to the "critical path" project schedule. FTA cautions recipients that do not currently operate the type of vehicle proposed in the project about exercising this pre-award authority. FTA encourages these sponsors to wait until later in the process when project plans are more fully developed. FTA reminds project sponsors that the procurement of vehicles must comply with all Federal requirements including, but not limited to, competitive procurement practices, the Americans with Disabilities Act, and Buy America. FTA encourages project sponsors to discuss the procurement of vehicles with FTA in regard to Federal requirements before exercising pre-award authority. Because there is not a formal engineering phase for Small Starts projects, FTA does not extend pre-award authority for demolition and procurement of long lead items. Instead, this work must await receipt of a construction grant award or an expedited grant agreement.

#### a. Real Property Acquisition

FTA extends pre-award authority for the acquisition of real property and real property rights for CIG projects (New or

Small Starts or Core Capacity) upon completion of the environmental review process for that project. The environmental review process is completed when FTA signs a combined FEIS/ROD, ROD, FONSI or makes a CE determination. With the limitations and caveats described below, real estate acquisition may commence, at the project sponsor's risk. To maintain eligibility for a possible future FTA grant award, any acquisition of real property or real property rights must be conducted in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations, 49 CFR part 24. This pre-award authority is strictly limited to costs incurred: (i) To acquire real property and real property rights in accordance with the URA regulation, and (ii) to provide relocation assistance in accordance with the URA regulation. This pre-award authority is limited to the acquisition of real property and real property rights that are explicitly documented in the draft environmental impact statement (DEIS), FEIS, environmental assessment (EA), or CE document, as needed for the selected alternative that is the subject of the FTA-signed ROD or FONSI, or CE determination. This pre-award authority regarding property acquisition that is granted at the completion of the environmental review process does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA, with one exception—namely when a building that has been acquired, has been vacated and awaits demolition poses a potential fire safety hazard or other hazard to the community in which it is located or is susceptible to reoccupation by unauthorized occupants. Demolition of the building is also covered by this pre-award authority upon FTA's written agreement that the adverse condition exists. Pre-award authority for property acquisition is also provided when FTA makes a CE determination for a protective buy or hardship acquisition in accordance with 23 CFR 771.118(d)(3). Pre-award authority for property acquisition is also provided when FTA completes the environmental review process for the acquisition of right-of-way as a separate project in accordance with 49 U.S.C. 5323(q). When a tiered environmental review in accordance with 23 CFR 771.111(g) is used, pre-award authority is not provided upon completion of the first-tier environmental document except when the Tier-1 ROD or FONSI signed by FTA explicitly provides such pre-

award authority for a particular identified acquisition. Project sponsors should use pre-award authority for real property acquisition relocation assistance with a clear understanding that it does not constitute a funding commitment by FTA. FTA provides pre-award authority upon completion of the environmental review process for real property acquisition and relocation assistance for displaced persons and businesses in accordance with the requirements of the URA.

#### b. Reimbursement of Costs Incurred Under Pre-Award Authority

Although FTA provides pre-award authority for property acquisition, long lead items, and vehicle purchases upon completion of the environmental review process, FTA does not generally award Federal funding for these activities conducted under pre-award authority until the project receives a CIG program construction grant. This is to ensure that Federal funds are not risked on a project whose advancement into construction is still not yet assured.

#### c. National Environmental Policy Act (NEPA) Activities

NEPA requires that major projects proposed for FTA funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives to avoid and reduce adverse impacts. Projects of more limited scope also need a level of environmental review, to determine whether there are significant environmental impacts or confirmation that a CE applies. FTA's regulation titled "Environmental Impact and Related Procedures," at 23 CFR part 771 states that the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA financial assistance (23 CFR 771.105(f)). Accordingly, FTA extends pre-award authority for costs incurred to comply with NEPA regulations and to conduct NEPA-related activities, effective as of the earlier of the following two dates: (1) The date of the Federal approval of the relevant STIP or STIP amendment that includes the project or any phase of the project, or that includes a project grouping under 23 CFR 450.216(j) that includes the project; or (2) the date that FTA approves the project into the project development phase of the CIG program. The grant applicant must notify the appropriate FTA Regional Office upon initiation of the Federal environmental review process consistent with 23 CFR 771.111. NEPA-related activities include, but are not

limited to, public involvement activities, historic preservation reviews, section 4(f) evaluations, wetlands evaluations, and endangered species consultations. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process and associated engineering, and to prepare environmental, historic preservation and related documents. When a New Starts, Small Starts, or Core Capacity project is granted pre-award authority for the environmental review process, the reimbursement for NEPA activities conducted under pre-award authority may be sought at any time through section 5307 (Urbanized Area Formula Program) or the flexible highway programs (e.g., Surface Transportation Program or Congestion Mitigation and Air Quality Improvement Program). Reimbursement from the section 5309 CIG program for NEPA activities conducted under pre-award authority is provided only for expenses incurred after entry into the project development phase and only once a construction grant agreement is signed. FTA reimbursement for costs incurred is not guaranteed and recipients may not start activities and incur costs under pre-award authority for property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials until the environmental review process is complete.

*For more information about FTA's National Environmental Policy Act (NEPA) activities, contact Megan Blum, Office of Environmental Programs, at (202) 366-0463 or [megan.blum@dot.gov](mailto:megan.blum@dot.gov).*

#### d. Other CIG Project Activities Requiring Letter of No Prejudice (LONP)

Except as discussed in paragraphs i through iii above, a CIG project sponsor must obtain a written LONP from FTA before incurring costs for any activity not covered by pre-award authority. To obtain an LONP, an applicant must submit a written request accompanied by adequate information and justification to the appropriate FTA Regional Office, as described in B below.

*For more information about the Fixed Guideway Capital Investment Grants program, including LONP policy, real property acquisition, and reimbursement of costs incurred under Pre-Award Authority, contact Elizabeth Day, Office of Capital Project Development, at (202) 366-5159 or [elizabeth.day@dot.gov](mailto:elizabeth.day@dot.gov).*

#### e. Pre-Award Authority for the Expedited Project Delivery (EPD) Pilot Program

The EPD Pilot Program, as authorized by Section 3005(b) of the Fixing America's Surface Transportation Act (FAST Act), is aimed at expediting delivery of new fixed guideway capital projects, small starts projects, or core capacity improvement projects. Section 3005(b) requires the FTA to notify Congress and the applicant, in writing, within 120 days after the receipt of a complete application, on the decision of project selection. FTA will extend pre-award authority for all eligible project costs at the time it is announced that a project has been selected. There is no pre-award authority provided until a project selection announcement is made, and costs incurred prior to project selection are not eligible. Letters of No Prejudice will not be provided for the EPD Pilot Program, as all eligible costs are covered by pre-award authority at the time of project selection.

Although FTA provides pre-award authority for eligible project costs, FTA does not award Federal funding for activities conducted under pre-award authority until the project receives an EPD Pilot Program construction grant. This is to ensure that Federal funds are not risked on a project whose advancement into construction is not yet assured. To maintain eligibility for a possible future FTA grant award, any acquisition of real property or real property rights must be conducted in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations, 49 CFR part 24.

*For more information about the Expedited Project Delivery Pilot Program, contact Mark Ferroni, Office of Planning and Environment, at (202) 366-3233 or [mark.ferroni@dot.gov](mailto:mark.ferroni@dot.gov).*

#### B. Letter of No Prejudice (LONP) Policy

##### 1. Policy

LONP authority allows an applicant to incur costs on a project utilizing non-Federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project at a later date. LONPs are applicable to projects and project activities not covered by automatic pre-award authority. The majority of LONPs will be for Section 5309 CIG program projects undertaking activities not covered under automatic pre-award authority. LONPs may be issued for

formula funds beyond the life of the current authorization or FTA's extension of automatic pre-award authority; however, the LONP is limited to a five-year period, unless otherwise authorized in the LONP, or otherwise extended. Receipt of Federal funding under any program is not implied or guaranteed by an LONP.

##### 2. Conditions and Federal Requirements

The conditions and requirements for pre-award authority specified in section V.4.ii and V.4.iii above apply to all LONPs for the CIG program. Because project implementation activities may not be initiated before completion of the environmental review process, FTA will not issue an LONP for such activities until the environmental review process has been completed with a combined FEIS/ROD, ROD, FONSI, or CE determination.

##### 3. Request for LONP

Before incurring costs for project activities not covered by automatic pre-award authority, the project sponsor must first submit a written request for an LONP, accompanied by adequate information and justification, to the appropriate regional office and obtain written approval from FTA. FTA approval of an LONP is determined on a case-by-case basis. Federal funding under the CIG program is not implied or guaranteed by an LONP. Specifically, when requesting an LONP, the applicant shall provide the following items:

a. Description of the activities to be covered by the LONP.

b. Justification for advancing the identified activities. The justification should include an accurate assessment of the consequences to the project scope, schedule, and budget should the LONP not be approved.

c. Allocated level of risk and contingency for the activity requested.

#### C. FY 2022 Annual List of Certifications and Assurances

Section 5323(n) requires FTA to publish annually a list of all certifications required under Chapter 53 concurrently with the publication of this annual apportionment notice. The FY 2022 version of FTA's Certifications and Assurances is available on FTA's website at FY 2022 Annual List of Certifications & Assurances.

FTA cannot make an award or an amendment to an award unless the recipient has executed the latest version of FTA's Certifications and Assurances. FTA encourages recipients of formula funding to execute the FY 2022 Certifications and Assurances

electronically in TrAMS within 90 days of this notice, to prevent delays.

#### D. Civil Rights Requirements

Recipients must ensure their programs and services operate in a nondiscriminatory manner and fulfill reporting requirements to document their civil rights compliance as a condition to receiving Federal funds.

Recipients must carry out provisions of the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, as amended, and the Department of Transportation's implementing regulations at 49 CFR parts 27, 37, 38, and 39. FTA's ADA Circular (C 4710.1) provides guidance for implementing the regulatory requirements of the ADA.

- In addition, recipients must regularly prepare and submit in TrAMS civil rights program plans and reports to establish and demonstrate compliance and document policies and practices in the following areas: Title VI of the Civil Rights Act of 1964: The Department of Transportation's Title VI implementing regulations are found in 49 CFR part 21. FTA's Title VI Circular (C 4702.1B) provides guidance for carrying out the regulatory requirements and outlines the Title VI program requirements and timeline for submitting updates.

- Disadvantaged Business Enterprise (DBE) program: The Department of Transportation's DBE implementing regulations are found in 49 CFR part 26 and set forth requirements for implementing the DBE program in good faith and developing and reporting on the triennial DBE goal.

- Title VII of the Civil Rights Act of 1964, Equal Employment Opportunity (EEO): The Department of Transportation's EEO implementing regulations are found in 49 CFR part 21. FTA's EEO Circular (C 4704.1A) provides guidance for carrying out the regulatory requirements and outlines the EEO program submission process.

Recipients are expected to maintain current civil rights program plans and submit required reports in TrAMS. Recipients with past due or expired programs are ineligible for new funding awards and may be subject to other remedies or sanctions at FTA's discretion.

While not new requirements, recipients are specifically reminded of the following:

- Recipients awarding \$250,000 or more in FTA-funded contracts must comply with the Disadvantaged Business Enterprise (DBE) regulations, including by implementing a DBE program that affirmatively remedies the ongoing effects of discrimination in

transportation contracting. The recipient must conduct outreach to and consultation with small businesses, women-owned businesses, and minority-owned businesses; apply DBE goals as needed when exercising pre-award authority; and verify the DBE certification of transit vehicle manufacturers before purchasing transit vehicles.

- Recipients in urbanized areas of 200,000 or more in population and with 50 or more fixed-route vehicles in peak service must conduct a service equity analysis for all service changes that meet the recipient's definition of "major service change" prior to implementing the service change. Those recipients also must conduct a fare equity analysis for all fare increases or decreases prior to implementing a fare change. Furthermore, an environmental justice analysis is not a substitute for a Title VI service equity analysis triggered by a major service change or fare change. When a full equity analysis is not required due to the size of the recipient or duration of a change, FTA expects agencies to take steps to ensure changes are equitable and nondiscriminatory.

Recipients are encouraged to reach out to FTA's Office of Civil Rights when contemplating new projects, new services, or new service models for technical assistance and guidance, to support recipients in achieving their equity and accessibility goals and complying with federal civil rights requirements.

#### E. Consolidated Planning Grants (CPG)

FTA and FHWA planning funds under both the Metropolitan Planning and State Planning and Research Programs can be consolidated into a single consolidated planning grant, awarded by either FTA or FHWA. The CPG eliminates the need to monitor individual fund sources, if several have been used, and ensures that the oldest funds will always be used first.

Under the CPG, States can report metropolitan planning program expenditures to comply with the Uniform Guidance 2 CFR part 200, subpart F, for both FTA and FHWA under the Catalogue of Federal Domestic Assistance number for FTA's Metropolitan Planning Program (20.505). Additionally, for States with an FHWA Metropolitan Planning (PL) fund-matching ratio greater than 80 percent, the State can waive the 20 percent local share requirement, with FTA's concurrence, to allow FTA funds used for metropolitan planning in a CPG to be granted at the higher FHWA rate. For some States, this Federal match rate can exceed 90 percent.

States interested in transferring planning funds between FTA and FHWA should contact the FTA Regional Office or FHWA Division Office for more detailed procedures. FHWA Order 4551.1 dated August 12, 2013, on "Fund Transfers to Other Agencies and Among Title 23 Programs" provides guidance and more detailed information.

For further information on CPGs, contact Ann Souvandara, Office of Budget and Policy, FTA, at (202)366-0649 or [ann.souvandara@dot.gov](mailto:ann.souvandara@dot.gov); or Victor Austin, Office of Planning and Environment at (202) 366-2996 or [victor.austin@dot.gov](mailto:victor.austin@dot.gov).

#### F. Grant Application Procedures

All applications are filed electronically. FTA continues to award and manage grants and cooperative agreements using the Transit Award Management System (TrAMS). To access TrAMS, contact your FTA Regional Office. Resources on using TrAMS can be found on FTA's website at <https://www.transit.dot.gov/TrAMS>.

FTA regional staff is responsible for working with potential recipients to review and process grant applications. In order for an application to be considered complete and for FTA to assign a Federal Award Identification Number (FAIN), enabling submission in TrAMS, and submission to the Department of Labor (when applicable), the following requirements must be met:

- Applicants must be registered and have an "active status" in the System for Award Management (SAM) and its registration is current. To register an entity or check the status and renew registration, visit the SAM website at <https://www.sam.gov/SAM>.
- Applicant's contact information is correct and up to date.
- Applicant has properly submitted its annual certifications and assurances.
- Applicant's Civil Rights submissions are current and approved.
- Recipient has a Transit Asset Management plan in place that meets the requirements of 49 CFR part 625 or is covered by a compliant Group Plan.
- Documentation is on file to support status as either a designated recipient (for the program and area) or a direct recipient.
- Funding is available, including any flexible funds included in the budget, and split letters or suballocation letters on file, where applicable, to support amount being applied for in grant application.
- The activity is listed in a currently approved Transportation Improvement Program (TIP); Statewide Transportation Improvement Program (STIP), or Unified Planning Work

Program (UPWP) unless such requirements have been waived for the specific funding and activity type to facilitate response and recovery from the COVID-19 public health emergency.

ix. All eligibility issues are resolved.

x. Required environmental findings are made.

xi. The application contains a well-defined scope of work including at least one project with accompanying project narratives, budget that includes scope codes and activity line-item information, Federal and non-Federal funding amounts, and milestones.

xii. Major Capital Projects as defined by 49 CFR part 633 Project Management Oversight must document FTA has reviewed the project management plan and provided approval.

xiii. Milestone information is complete. FTA will also review status of other open grants' reports to confirm financial and milestone information is current on other open awards.

xiv. Applicant has ensured that it has registered to report to the National Transit Database, and that any beneficiaries that provide public transportation service have also registered to report to the National Transit Database.

xv. FTA must provide Congressional notification before awarding competitive grants.

Other important issues that impact FTA grant processing activities are discussed below.

#### a. Award Budgets—Scope Codes and Activity Line Items (ALI) Codes; Financial Purpose Codes

FTA uses the Scope and Activity Line Item (ALI) Codes in the award budgets to track program trends, to report to Congress, and to respond to requests from the Inspector General and the Government Accountability Office (GAO), as well as to manage grants. The accuracy of the data is dependent on the careful and correct use of codes.

#### b. Designated and Direct Recipients Documentation

For its formula programs, FTA primarily apportions funds to the Designated Recipient in the large UZAs (areas over 200,000), or for areas under 200,000 (small UZAs and rural areas), it apportions the funds to the Governor, or the Governor's designee (*e.g.*, State DOT). Depending on the program and as described in the individual program sections found in Section IV of this notice, further suballocation of funds may be permitted to eligible recipients who may then apply directly to FTA for the funding as direct recipients.

For the programs in which FTA can make grants to eligible direct recipients, other than the designated recipients, recipients are reminded that documentation must be on file to support the (1) status of the recipient either as a designated recipient or direct recipient; and (2) the allocation of funds to the direct recipient.

Documentation to support existing designated recipients for the UZA must also be on file at the time of the first application in FY 2022. Split letters or suballocation letters (Governor's Apportionment letters), must also be on file to support grant applications from direct recipients. Once suballocation letters for FY 2022 funding are finalized they should also be uploaded as part of the application into TrAMS.

The Direct Recipient is required to upload to TrAMS a copy of the suballocation letter (Letter) indicating their allocation of funding, for the appropriate fund program, when the applicant transmits their application for initial review. The Letter must be signed by the Designated Recipient, or as applicable in accordance with their planning requirements. If there are two Designated Recipients, both entities must sign the Letter. The Letter must: (1) Indicate the allocations to the respective Direct Recipients listed in the letter; (2) incorporate language above the signatories to reflect this agreement; and (3) make clear that the Direct Recipient will assume all responsibility associated with the award for the funds. When drafting the Letter, Designated Recipients may use the template language below:

"As identified in this Letter, the Designated Recipient(s) authorize the reassignment/reallocation of [enter fund source, *e.g.*, Section 5307 funds] to the Direct Recipient(s) named herein. The undersigned agree to the amounts allocated/reassigned to each Direct Recipient. Each Direct Recipient is responsible for its application to the Federal Transit Administration to receive such funds and assumes the responsibilities associated with any award for these funds."

#### 1. Payments

Once a grant has been awarded and executed, requests for payment can be processed. To process payments FTA uses ECHO-Web, an internet accessible system that provides recipients the capability to submit payment requests on-line, as well as receive user-IDs and passwords via email. New applicants should contact the appropriate FTA Regional Office to obtain and submit the registration package necessary for set-up under ECHO-Web.

#### 2. Oversight

FTA is responsible for conducting oversight activities to help ensure that grant recipients use FTA Federal financial assistance in a manner consistent with their intended purpose and in compliance with regulatory and statutory requirements. FTA conducts periodic oversight reviews to assess recipient compliance with applicable Federal requirements. Each Urbanized Area Formula Program recipient is reviewed every three years, (FTA's Triennial Review); and States and state-wide public transportation agencies are reviewed periodically to assess the management practices and program implementation of FTA state-wide programs (*e.g.*, Planning, Rural Areas, Enhanced Mobility of Seniors and Individuals with Disabilities Programs). Other more detailed reviews are scheduled based on an annual recipient oversight assessment. Important objectives of FTA's oversight program include but are not limited to: Determining recipient compliance with Federal requirements; identifying technical assistance needs and delivering technical assistance to meet those needs; spotting emerging issues with recipients in a forward-looking fashion; recognizing when there is a need for more in-depth reviews in the areas of procurement, financial management, and civil rights; and identifying recipients with recurring or systemic issues.

#### 3. Technical Assistance

As noted throughout the notice, FTA continues to rely on several of the existing program circulars for general program guidance. FTA is continuing to update the program circulars, with an opportunity for notice and comment where warranted, to reflect amendments to chapter 53 of title 49, U.S.C. made by the IIJA. In the meantime, if you have any questions, please do not hesitate to contact FTA. FTA headquarters and regional staff will be pleased to answer your questions and provide any technical assistance you may need to apply for FTA program funds and manage the grants you receive. At its discretion, FTA may also use program oversight consultants to provide technical assistance to recipients on a case-by-case basis. This notice and the program guidance circulars previously identified in this document may be accessed via the FTA website at [www.transit.dot.gov](http://www.transit.dot.gov).

*G. Grant Management*

## 1. Grant Reporting

Recipients of FTA funds are reminded that all FTA recipients are required to report on their grants and that it is critical to ensure reports demonstrate that reasonable progress is being made on the project. At a minimum, all awards require a Federal Financial Report (FFR) and a Milestone Progress Report (MPR) on an annual basis, with some reports required quarterly or monthly depending on the recipient and the type of projects funded under the grant. The requirements for these reports and other reporting requirements can be found in FTA Circular 5010.1E, *Grant Management Requirements*, dated July 16, 2018. FTA staff, auditors, and contractors rely on the information provided in the FFR and MPR to review and report on the status of both financial and project-level activities contained in the grant. It is critical that recipients provide accurate and complete information in these reports and submit them by the required due date. Failure to report or demonstrate reasonable progress on projects can result in suspension or premature close-out of a grant.

## 2. Inactive Grants and Grant Closeout

In FY 2022, FTA will continue to focus on inactive grants and grants that do not comply with reporting requirements. If appropriate, FTA will take action to close out and deobligate

funds from these grants if reasonable progress is not being made. The efficient use of funds will further FTA's fulfillment of its mission to provide efficient and effective public transportation systems for the nation. As inactive grants continue to be an audit finding within the DOT, FTA must take action to ensure its grants do not prevent the DOT from receiving a "clean audit" opinion on its annual financial statement.

At the end of Federal Fiscal Year 2022, FTA will identify the list of grants that were awarded on or prior to September 20, 2019, have had no funds disbursed or have not had a disbursement since September 30, 2021. FTA Regional Offices will contact grant recipients with grants that meet these criteria to notify them that FTA intends to close the grant and deobligate any remaining funds unless the recipient can provide information that demonstrates that the projects funded by the grant remain active and the recipient has a realistic schedule to expedite completion of the projects funded in the grant.

## 3. Transportation Investments Generating Economic Recovery (TIGER), Better Utilizing Investments To Leverage Development (BUILD) and Rebuilding American Infrastructure With Sustainability and Equity (RAISE) Discretionary Grants

Recipients of open TIGER, BUILD and RAISE grants should be aware that, as

a matter of law, all remaining TIGER funds must be disbursed from grants by the end of the fifth fiscal year after the Expiration of Obligation Authority. (See 31 U.S.C. 1552.) For FTA TIGER VII projects, that requirement takes effect at the end of FY 2022. Accordingly, once ECHO closes for disbursements in late September 2022, all undisbursed funds within FTA TIGER VII-funded grants will no longer be available to the recipient. These undisbursed funds will be de-obligated from the grant. Even if a recipient has incurred costs or disbursed funds prior to the close of ECHO, if the recipient has not actually drawn down the funds by the time ECHO closes, FTA will be unable to reimburse the recipient. Therefore, recipients with open TIGER VII grants must ensure project activities are completed and all funds are drawn down before ECHO closes by late September 2022.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Recipients should refer to applicable regulations and statutes referenced in this document.

**Nuria I. Fernandez,**

*Administrator.*

[FR Doc. 2022-09143 Filed 4-27-22; 8:45 am]

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# FEDERAL REGISTER

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## Part III

### The President

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Memorandum of April 21, 2022—Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961



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# Presidential Documents

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Title 3—

Memorandum of April 21, 2022

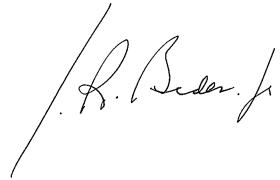
The President

## Delegation of Authority Under Section 506(a)(1) of the Foreign Assistance Act of 1961

### Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 506(a)(1) of the FAA to direct the drawdown of up to an aggregate value of \$800 million in defense articles and services of the Department of Defense, and military education and training, to provide assistance to Ukraine and to make the determinations required under such section to direct such a drawdown.

You are authorized and directed to publish this memorandum in the *Federal Register*.



THE WHITE HOUSE,  
Washington, April 21, 2022

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